Partnership Law: Used, Misused or Abused?

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Abstract

This article analyses the increasing use of UK partnerships for criminal purposes, often in other jurisdictions, and argues that the regulatory responses are inadequate, and must be supplemented by a comprehensive ethical framework. I first argue that partnerships offer substantial benefits for a variety of businesses, but that they also have vulnerabilities which have led to their misuse and even abuse through criminal activities, which I also discuss. I then analyse the deficiencies of the regulatory measures designed to tackle the abuses, including requirements to disclose participant identity and accounts, and anti-money laundering and tax evasion measures. Finally, I evaluate the use of a supplementary ethical framework to reduce the abuses, and examine how such a framework could be created. My analysis provides an understanding of the causes and consequences of partnership abuses and of how they can be overcome. This advances the ongoing debate in the UK over the abuse of partnerships and the wider issue of business transparency, and has implications for the many other jurisdictions in which UK partnerships operate and in which the abuses take place, as well as for jurisdictions which have similar partnership vehicles to those in the UK.

Keywords

General partnerships, limited partnerships, LLPs, money laundering, tax evasion, tax avoidance, regulation, ethics, transparency, accounts

1. Introduction

The misuse of shell companies and – often connected – of tax havens has been recognised and analysed by journalists and academics across the globe.[1] Yet the misuse,

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[1] For example, Emile van der Does de Willebois and others, *The Puppet Masters: How the Corrupt Use Legislative Structures to Hide Stolen Assets and What to Do About It*, 34-36 (World Bank/UNODC

Berry, Elspeth, 'Partnership Law: Used, Misused or Abused?'. *European Business Law Review* 32, no. 2 (2021): 207-250.

often amounting to abuse, of partnership vehicles (including limited liability partnerships (LLPs)) in the UK, has historically attracted much less attention. However, it has now come under the spotlight through a joint Transparency International UK (TI-UK)/belli¿ngcat report[2] and widespread media coverage[3] of the use of UK partnerships, in particular Scottish limited partnerships (SLPs), to facilitate illegal activities including money laundering (ML) and tax evasion. These indicate that partnerships now form their own ecosystem of financial crime and have prompted a consultation by the UK's Department of Business, Enterprise and Industrial Strategy (BEIS) on limited partnerships (LPs)[4] and influenced another on registration and transparency.[5]

This article addresses this gap in the legal literature in at least three ways. First, it analyses the nature of the problem and argues that current models of regulation to combat the abuse of partnerships fail to balance the importance of providing to businesses the distinctive and valuable features of partnerships, with the need to adequately protect both third parties who deal with UK partnerships and the wider domestic and international community who may be victims of unlawful or undesirable behaviour facilitated by their use. Second and third, it proposes solutions in order to restore the balance: not only must regulation be improved in a number of key respects, but a comprehensive ethical framework must be implemented both to close loopholes in and improve compliance with regulation, and to raise standards above the current regulatory minimum.[6] This twin track approach to solving the problem of abuse should be viewed as reflecting Fuller's arguments about the separate moralities of duty and aspiration, with duty underlying basic levels of regulation to ensure an

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StAR 2011), James S Henry, *The Price of Offshore Revisited* (Tax Justice Network 2012), Nicholas Shaxson, *Treasure Islands: Tax Havens and the Men who Stole the World* (London; Vintage 2012) and *Tackling Tax Havens* 56(3) Finance & Development 6 (2019), Michael G Findley, Daniel L Nielson and JC Sharman, *Global Shell Games: Experiments in Transnational Relations, Crime and Terrorism,* 31-42 (Cambridge; CUP 2014).

[2] TI-UK and bell¿ngcat, *Offshore in the UK: Analysing the use of Scottish Limited Partnerships in Corruption and Money Laundering*, 20 (2017).

[3] For example, David Leask and Richard Smith, *Scam Financial Gambling Sites Are Fronted by Scots Shell Firms* (Glasgow, The Herald, 27 October 2016), Caelainn Barr, *The Scottish Firms That Let Money Flow from Azerbaijan to the UK* (London, The Guardian, 4 September 2017), Simon Maybe and Tim Whewell, *Potters Bar, Ukraine's Stolen Billions and the Eurovision Connection* (BBC, 6 February 2018) <http://www.bbc.co.uk/news/uk-42950097>.

[4] BEIS, *Review of Limited Partnership Law – A Call for Evidence* (January 2017), *Limited Partnerships: Reform of Limited Partnership Law* (30 April 2018) and *Limited Partnerships: Reform of Limited Partnership Law – The Government Response to the Consultation* (December 2018).

[5] BEIS, *Corporate Transparency and Register Reform: Consultation on Options to Enhance the Role of Companies House and Increase the Transparency of UK Corporate Entities*, para. 8 (May 2019) and *Corporate Transparency and Register Reform: Government Response to the Consultation on Options to Enhance the Role of Companies House and Increase the Transparency of UK Corporate Entities* (September 2020).

[6] William Blair and Cara Barbiani, *Ethics and Standards in Financial Regulation* in Costanza A Russo, Rosa M Lastra and William Blair (eds), *Research Handbook on Law and Ethics in Banking and Finance*, 26 (Cheltenham; Elgar 2019).

ordered society, and aspiration underlying an ethical framework through which individuals realise their best selves.[7] The article also argues that although end users are less likely than professionals and other trust and company service providers (TCSPs) to be amenable to these strategies, TCSPs are gatekeepers for partnership formation and operation and can therefore prevent end users from accessing partnerships.

The gap in the literature is also being addressed in other respects which intersect with many of the issues considered in this article. Specifically, Jonathan Hardman argues that Scottish partnerships derive their unique advantages not from statute but from private ordering, and therefore it is not necessary for government agencies to actively intervene to deprive wrongdoers of these advantages; rather they fall away naturally as a result of the wrongdoing and can be challenged accordingly.[8]

This article starts by evaluating the rationales for the partnership vehicle and the legal features which respond to these but which also make it vulnerable to abuse. It then analyses the resulting abuses, before examining the solutions: first, the regulatory framework and proposals for its reform; and second, the contribution which an ethical framework could make to reducing the abuses. Finally, a conclusion is drawn as to the importance and urgency of both regulatory and ethical reforms.

2. The Rationale for the Partnership Vehicle

Partnerships have existed throughout the world since earliest times in order to promote commerce where the capital and work of a single person would be insufficient.[9] Personal liability was an early feature,[10] as was privacy,[11] not least because partnerships existed before there were formal disclosure mechanisms. Flexibility and informality were also early features:[12] commentators writing long before the enactment of the UK's codifying Partnership Act 1890 noted that 'no character or license is necessary; the bare consent of the parties being…sufficient'[13] and that 'nothing upon the subject

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[7] Lon L Fuller, *The Morality of Law*, 5-9 (New Haven, CY: Yale University Press 1969). See also Adam Smith, *Theory of Moral Sentiments*, 257 (first published 1759, New York; Dover Publications Inc 2006).

[8] Jonathan Hardman, *Reconceptualising Scottish Limited Partnerships*, forthcoming in JCLS, doi: 10.1080/14735970.2020.1803784.

[9] William Watson, *A Treatise of the Law of Partnership*, xii and 55 (A Strahan and W Woodfall 1794), Niel Gow, *A Practical Treatise on the Law of Partnership*, 2 (London; Charles Hunter 1825), Erik PM Vermeulen, *The Evolution of Legal Business Forms in Europe and the United States: Venture Capital, Joint Ventures and Partnership Structures*, 6-7 and 105-110 (Alphen aan den Rijn, Kluwer 2003), Christopher Anglim, *Joined in Common Enterprise: A Bibliography on the Origins of Early Anglo-American Partnership Law*, 2-4 and 6 (William S Hein 2005), John J McCusker ed., *History of World Trade since 1450*, Vol. 2 556-559 (Farmington Hills, MI; Macmillan USA 2006).

[10] Watson at n.9, Ch XII, Gow n.9, Ch IV, Anglim n.9, 2-3 and 9.

[11] Watson at n.9 and Sir Frederick Pollock, *Essays in Jurisprudence and Ethics*, Ch IV (London; Macmillan 1882).

[12] Anglim at n.9, 6-8.

[13] Gow at n.9, 4.

of partnership….requires explanation, but in what manner the profits are to be divided'.[14] The Partnership Act continues to reflect and reinforce these features by being relatively brief and having been little revised. It facilitates the formation and operation of general partnerships which may be used to carry on any trade, occupation or profession,[15] and provides flexibility (with minimal regulation of the internal structure or agreement), informality (including tax transparency, since partnerships themselves do not pay tax and profits are taxed only in the hand of the partners) and privacy (since little or no information need be publicly disclosed).[16] Indeed, a general partnership is the default option for many businesses, because it can be created informally or even accidentally merely by satisfying the definition in section 1 of the Partnership Act (two or more persons carrying on business in common with a view of profit), and much more easily than corporate forms.[17] A partnership also enables efficiency, because it is founded on mutual trust between partners, which is a cheaper and more effective method of monitoring the performance of co-partners than more formal mechanisms,[18] the integration of management and ownership leads to individual autonomy and adaptability,[19] and participants are readily incentivised: if the firm does well, the partners automatically share in that success and if it does not, the firm has the advantage of being under no obligation to pay partners; the profit share of a particular partner can easily be increased or decreased to reflect his individual performance; and it is relatively easy to bring new partners into a partnership, which can incentivise employees (and also facilitate succession planning).[20]

The rationale for limited partnerships (LPs) as opposed to general partnerships is that they can provide not only privacy, flexibility and tax transparency,[21] but also limited liability to some (though, importantly, not all) owners, in return for greater disclosure through registration of (minimal) details about the partnership.[22] LPs, which are governed by the Partnership Act as amended by the Limited Partnerships Act 1907 (LPA 1907), have increased markedly in popularity in the UK since 1987 when HM Revenue & Customs (HMRC) confirmed that an LP used as a venture capital investment fund would be treated as a partnership for tax purposes and thus

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[14] William Paley, *The Principles of Moral and Political Philosophy*, 103 (first published 1785: Cambridge; CUP 2013).

[15] Partnership Act 1890, s.45.

[16] Office of Tax Simplification (OTS), *Review of Partnerships: Interim Report*, paras F8 and F12 (January 2014), Barr at n.3.

[17] Vermeulen at n.9, 14-17.

[18] Vermeulen at n.9, 205-207.

[19] Vermeulen at n.9, 205.

[20] OTS at n.16, paras F9-F10.

[21] Law Society of Scotland, *Consultation Response – Limited Partnerships: Reform of Limited Partnership Law*, response to Q4 (July 2018).

[22] Anglim at n.9 15-18, Pollock n.10 Ch IV, Vermeulen at n.9 105 and 110-111.

not taxed directly.[23] They continue to be used widely in the private equity industry[24] (as are limited liability partnerships (LLPs))[25] as well as by family businesses (due to their flexibility and tax transparency),[26] for tax planning (in particular to generate trading losses which can be set against other profits),[27] and in property development, farming, film production and the oil and gas industry.[28] As the Office of Tax Simplification (OTS) has noted, the LP is 'a vehicle that has been rediscovered of late'.[29]

The rationale for LLPs which, despite the partnership nomenclature, are corporate bodies, governed by the Limited Liability Partnerships Act 2000 (LLP Act) and a number of statutory instruments, is to offer a combination of partnerships' advantageous flexibility and tax transparency with companies' advantageous separate legal personality and limited liability for all members,[30] albeit in return for the registration of considerable information about the firm, including its accounts (though not its internal agreement). There are, however, many parallels between LPs and LLPs; the OTS has noted that:

> [b]oth LPs and LLPs have become widely used in investment arrangements…. The driver is a combination of flexibility, simplicity and allowing limited liability status where needed….one point that struck us was how international these arrangements are and how the UK's partnership laws have undoubtedly facilitated the growth of this useful component of the 'City's' offering in what is a very competitive marketplace.[31]

A more recent rationale for all three partnership vehicles has been their ability to enable direct corporate participation,[32] for which BEIS noted there is a considerable demand.[33] There are no restrictions on partnerships (including LLPs) having corporate partners, or any requirement to have a non-corporate partner. This makes them more attractive than companies, which have since 2008 been required to have at least one non-corporate director[34] and been under threat of being prohibited from having any

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[23] *BVCA Statement Approved by the Inland Revenue and the Department of Trade and Industry on the Use of Limited Partnerships as Venture Capital Investment Funds* (26 May 1987) and *Memorandum of Understanding between the BVCA and Inland Revenue on the Income Tax Treatment of Venture Capital and Private Equity Limited Partnerships and Carried Interest* (25 July 2003).

[24] Elspeth Berry, *Limited Partnership Law and Private Equity: An Instance of Legislative Capture?* 19(1) JCLS 105, 108-113 (2018).

[25] OTS at n.16, para. F12.

[26] Arabella Saker and Corinne Staves, *Capital Gains Tax and Partnerships* 1 PCB 29, 31 (2010) and Peter Hargreaves, *Trusts and Family Partnerships – Planning in the New Age* (2008) 4 PCB 244.

[27] *R (de Silva) v. Commissioners for HMRC* [2016] EWCA Civ 40, [2016] STC 1333.

[28] BEIS, *Review of Limited Partnership Law – A Call for Evidence*, n.4, 7.

[29] OTS at n.16, para. F12.

[30] *Explanatory Notes* to the Limited Liability Partnerships Act 2000.

[31] OTS at n.16, para. F12.

[32] Barr at n.3.

[33] BEIS, *Limited Partnerships: Reform of Limited Partnership Law* n.4, para. 47, Stephen M Bainbridge, *Corporate Directors in the United Kingdom* 59 Wm & Mary L Rev online 65, 71-75 (2018).

[34] Companies Act 2006, s.155.

corporate directors.[35] That threat, and the comparative advantage of LPs and LLPs, has receded; the government is now proposing that companies will be allowed to have corporate directors, the only restriction being that those corporates themselves can only have natural persons as directors.[36] The government is also considering applying this restriction to corporate general partners of LPs and to corporate designated members (essentially compliance officers[37]) of LLPs,[38] although not to general partnerships, general partners of LPs or, more significantly, LLP members other than designated members. Since LLPs are only required to have a minimum of two designated members,[39] this would allow the majority of LLP members in most firms to evade the restriction.

Before discussing the vulnerabilities of the partnership vehicle to abuse, it should be noted that nothing in its history indicates that its rationale included the avoidance of legal obligations: indeed by the 19th century it was 'well established, that no partnership can be contracted, except it have relation to fair trade or commerce, or some other thing that is honest and lawful'[40] and, as Jonathan Hardman also notes, illegality automatically dissolves a general or limited partnership.[41] The problem now is that although many partnerships continue the tradition of shared enterprise in a trade or profession, the growth in the use of partnerships as investment vehicles, and financial conduits in many of the abuse scenarios, has led to the exploitation of laws not designed for these purposes.

3. The Vulnerabilities of the Partnership Vehicle

The most obvious feature of general partnerships and LPs which makes them vulnerable to abuse is their privacy, which enables secrecy and anonymity. This is related to a second vulnerability of LPs and LLPs, limited liability. The laws governing business organisations in the UK have traditionally reflected a balance between disclosure

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[35] Companies Act 2006, s.156A, to be inserted by the Small Business, Enterprise and Employment Act 2015, s.87.

[36] BEIS, *Corporate Transparency and Register Reform: Consultation on Implementing the Ban on Corporate Directors* (9 December 2020), paras 22-26 (pp14-15; there are, in error, three sets of paragraphs numbered 25-26 in the document).

[37] John Whittaker and John Machell, *The Law of Limited Liability Partnerships*, para. 12.2 (London; Bloomsbury Professional 4th edn 2016). Designated members are subject to greater statutory obligations than those imposed on all LLP members.

[38] BEIS, *Corporate Transparency and Register Reform: Consultation on Implementing the Ban on Corporate Directors* n.36, para. 26 (p17; there are, in error, three sets of paragraphs numbered 25-26 in the document). The proposal actually refers to 'the general partners of an LLP [sic] and the designated members of an LLP' but the first reference to an LLP must be an error and actually intended to refer to an LP.

[39] LLP Act, s.8.

[40] Gow at n.9, 6.

[41] Partnership Act, s.34; see further Hardman n.8, section 4.

and liability; the courts,[42] the Registrar of Companies,[43] and BEIS[44] have all emphasised the importance of disclosure by those who benefit from the privilege of trading with limited liability, and misuse of general partnerships is less likely because there is no automatic liability shield for any partners (although corporate partners can be utilised to achieve limited liability). Since all partners in a general partnership have unlimited personal liability to its creditors, it is only required to disclose partners' names,[45] whereas an LP can have some partners with limited liability and so must register its details at Companies House. However, since it must also have at least one general partner with personal liability,[46] the registered information is minimal, whereas both LLPs and companies offer limited liability to all their members and so must register much more information, including their accounts and persons with significant control (PSCs).[47]

Unfortunately, the balance has now tipped too far in favour of limited liability and the facilitation of anonymity through opaque structures. Most general partnerships and LPs are exempt from the PSC regime;[48] the Partnerships (Accounts) Regulations 2008[49] (PAR 2008), which are supposed to ensure disclosure of partnership accounts where all partners are limited liability entities, are fatally flawed; and the financial services industry[50] for whom secrecy is a key requirement,[51] has ensured that even the minimal disclosure requirements for LPs are reduced for the two LP variants available only to that industry – private fund LPs (PFLPs)[52] and partnership schemes.[53] This is despite the fact that 'secrecy laws ….enable tax evasion [and] are also conducive to laundering the proceeds of crime and creating a criminogenic environment in

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[42] For example, *Sebry v. Companies House* [2015] EWHC 115 (QB), [2015] BCC 236 [51], *Camera di Commercio, Industria, Artigianato e Agricultura di Lecce v. Manni* C-398/15, EU:C:2017:19, para. 49.

[43] *Sebry* at n.22, [51].

[44] BEIS, *Article 30 of the Fourth Money Laundering Directive(4MLD) – Impact Assessment*, paras 33-35 (21 June 2017).

[45] Companies Act 2006, ss1200-1204.

[46] LPA 1907, s.4(2).

[47] CA 2006, Pts 15 and 21A, Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009, SI 2009/1804 (LLP Regulations 2009), Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2009, SI 2008/2011 (LLP Accounts Regulations).

[48] Scottish Partnerships (Register of People with Significant Control) Regulations 2017, SI 2017/694 (Scottish Partnerships PSC Regulations).

[49] SI 2008/569.

[50] BEIS, *Limited Partnerships: Reform of Limited Partnership Law,* n.4, paras 40-44.

[51] Berry, *Limited Partnership Law and Private Equity,* n.24, 123-125, D Walker, *Guidelines for Disclosure and Transparency in Private Equity*, 17-18 (November 2007).

[52] Limited Partnerships (Private Fund Limited Partnerships) Order 2017, SI 2017/514.

[53] Collective Investment in Transferable Securities (Contractual Scheme) Regulations, SI 2013/1388.

which financial crime thrives'.[54] The IMF[55] and the UK government[56] have highlighted reduced disclosure requirements compared to companies or LLPs as a factor in the use of UK LPs for ML and tax evasion,[57] and both the Financial Action Task Force (FATF)[58] and the Wolfsberg Anti-Money Laundering Principles for Private Banking[59] emphasise the need for partnership structures to be transparent. Meanwhile, limited liability enables 'owner shielding'[60] of LLP members, limited partners (and indeed general partners if they operate as corporate entities as discussed below) from claims by the firm's creditors, so that the creditors – and through them the wider community and economy – are disadvantaged.

A third vulnerability is that neither general partnerships nor LPs are currently subject to the 'valuable regulatory tool'[61] of the company investigations regime, although LLPs are,[62] and BEIS is considering extending it to LPs.[63] BEIS (on behalf of the Secretary of State) has the power to appoint inspectors to investigate and report on the affairs of a company/LLP if, inter alia, it has been formed or operated for any fraudulent or unlawful purpose, or the persons concerned with its formation or management have been found guilty of fraud, misfeasance or other misconduct towards it or its members.[64] An investigation may result in its winding up in the public interest, disqualification of its directors or LLP members, or disclosure of the report to a prosecuting authority or regulatory body.[65] Although Parliament has criticised the failure to use these powers sufficiently,[66] there is little doubt that the absence of an

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[54] Mary Alice Young, *Financial Transparency in Britain's Secrecy Jurisdictions Has Just Got A Whole Lot Murkier Following the UK's Decision to Leave the EU* 31(11) JIBLR 583, 585 (2016).

[55] IMF, *United Kingdom: Financial Sector Assessment Program – Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) – Technical Note; IMF Country Report 16/165; June 2016*, para. 49.

[56] HM Treasury and Home Office, *National Risk Assessment of Money Laundering and Terrorist Financing 2017*, para. 9.22.

[57] TI-UK and bell¿ngcat n.2, 5; see also HM Government and UK Finance, *Economic Crime Plan 2019-22*, 57, Action L4 (July 2019).

[58] FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, 24, 89 and 122 (2012, updated June 2019), van der Does de Willebois and others, n.1 49.

[59] (2012) at <https://www.wolfsberg-principles.com/sites/default/files/wb/pdfs/wolfsberg-standards/10.%20Wolfsberg-Private-Banking-Prinicples-May-2012.pdf>.

[60] Henry Hansmann, Reinier Kraakman and Richard Squire, *Law and the Rise of the Firm* 119 Harv L Rev 1335 (2006).

[61] Mark Stallworthy, *Company Investigations and the Prosecution of Fraud in the United Kingdom: Conflicting Public Interests* 8(4) ICCLR 115 (1997), IMF n.55, paras 49 and 56.

[62] Companies Act 1985, Part XIV applied to LLPs by Limited Liability Partnerships Regulations 2001 (LLP Regulations 2001), SI 2001/1090, Sch. 2 Pt I.

[63] BEIS, *Corporate Transparency and Register Reform: Consultation* n.5, paras 227-230 but not addressed in the UK government's response (BEIS, *Corporate Transparency and Register Reform: Government Response* n.5).

[64] Companies Act 1985, ss431-432 and LLP Regulations 2001 n.62, Sch. 2, Pt I.

[65] Companies Act 1985, s.441, Insolvency Act 1986, s.124A, LLP Regulations 2001 n.62, Sch. 3.

[66] House of Commons BEIS Committee, *Corporate Governance,* para. 43 (4th Report of Session 2016-17).

equivalent power to investigate partnerships makes partnerships more vulnerable to abuse than companies or LLPs.

A fourth vulnerability of both LPs and LLPs (and indeed companies) is the lack of verification of information by Companies House. Even if information is verified and found to be inaccurate, there is no sanction on LPs which fail to register the correct information on first registration, and the only sanction for failing to notify changes is a daily default fine on general partners of £1 per day.[67]

A fifth vulnerability of LPs and LLPs is their possession of a certificate of registration or incorporation,[68] and the option to have a so-called certificate of good standing. A certificate of registration or incorporation is stated to provide conclusive evidence that the firm came into existence on the date of registration or incorporation,[69] and although Jonathan Hardman argues compellingly that the certificate is evidence only of an LP's existence at the date of registration, not of its continuing existence, this is not settled law and, in any event, it is unlikely that victims of wrongdoers will appreciate the difference.[70] An LLP, and seemingly an LP, can request to have a copy of the certificate endorsed with a statement that it has been in continuous existence since its initial registration and that no action has been taken to strike it off the register (a so-called statement of good standing),[71] and there is evidence that these certificates are being used fraudulently as evidence of financial soundness even though Companies House is making no such judgment.[72] In contrast, a general partnership is not registered and cannot readily prove its existence. However, this also makes it difficult to establish the extent of misuse of general partnerships, and there are certainly examples of such misuse on account of their secrecy.[73]

A sixth vulnerability of all forms of partnership is the lack of any prohibition on corporate partners or members, despite the fact that they can be used both to limit partner liability and to obscure the true ownership of the firm. BEIS suggested that over 95% of SLPs have no natural persons as partners,[74] and TI-UK/belli¿ngcat noted that in one ML case, all but one of the 113 SLPs involved were controlled by corporate partners.[75]

Finally, the vulnerability which has made LLPs and Scottish partnerships popular for criminal activities in recent years – with numbers of LP registrations up by almost 250% in Scotland from 2010/11 to 2015/16, compared to under 50% in the rest of the

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[67] LPA 1907, s.9.

[68] Scottish Property Federation, *Review of Limited Partnership Law: Call For Evidence – Response Form*, Question 2 <https://www.scottishpropertyfederation.org.uk/sites/default/files/resources/BEIS%20Limited%20Partnerships.pdf>.

[69] LPA 1907, s.8C and the Limited Liability Partnerships Act 2000, s.3(4).

[70] Hardman at n.8, section 4.

[71] BEIS, *Corporate Transparency and Register Reform: Consultation,* n.5, para 246.

[72] BEIS, *Corporate Transparency and Register Reform: Consultation,* n.5, paras 247-248.

[73] van der Does de Willebois and others, n.1, 49-51.

[74] BEIS, *Review of Limited Partnership Law – A Call for Evidence,* n.4, 9.

[75] TI-UK and bell¿ngcat n.2, 7.

UK[76] – is their separate legal personality.[77] This strengthens the 'entity' shielding of such firms from the personal creditors of LLP members and partners, with consequent adverse effects on those creditors and, as with owner shielding, the wider community and economy.[78] Although Jonathan Hardman argues that the legal personality of Scottish partnerships arises by private bargaining, rather than as a gift from the State as in the case of LLPs,[79] the resulting benefits to users are the same. Abuse of other UK partnerships is less likely because their lack of legal personality can complicate transactions such as entering into contracts and owning property.[80] However, there is evidence of such abuse,[81] and their numbers have been increasing since the introduction of the PSC Register for Scottish partnerships.[82]

This analysis indicates that any reforms need to apply to all types of partnership in order to ensure that vulnerabilities, and thus abuses, are reduced overall rather than merely displaced from one type of partnership or jurisdiction to another.

4. The Abuses of the Partnership Vehicle

The following abuses of partnerships are serious, and disadvantage not only third parties who deal with the partnership, but also suppliers to those third parties, the families of all involved, HMRC and taxpayers – and thus the UK economy, as well as the economies of countries where UK partnerships operate.[83]

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[76] BEIS, *Review of Limited Partnership Law – A Call for Evidence* n.4, 8, Hazel Gough, *Four Reasons Why Scottish Limited Partnerships Need Further Reforms to Repair Their Tarnished Reputations* (insider.co.uk 15 November 2017).

[77] Partnership Act 1890, s.4(2), Laura Macgregor, *Partnerships and Legal Personality: Cautionary Tales from Scotland* 1 JCLS 237 (2020), Paul Sutton, *Scottish Limited Partnerships* 916 Tax J 26 (2008), Stephen Chan, *The Review of Scottish Limited Partnerships – And a Guide to What They Are* (Harper Macleod: HM Insights, 14 July 2017).

[78] Hansmann, Kraakman and Squire, n.60 and Macgregor, n.77.

[79] Hardman at n.8, section 6.

[80] The Law Commissions proposed separate personality for all partnerships (Law Commission and Scottish Law Commission, *Partnership Law*, para. 5.3 (Law Com No 283 and Scot Law Com No 192, 2003).

[81] The OCCRP's data reveals that several English LPs were used in the infamous ML 'Laundromats' <https://www.occrp.org/en/laundromat/profiles/>, <https://www.occrp.org/en/azerbaijanilaundromat/raw-data/>.

[82] BEIS, *Limited Partnerships: Reform of Limited Partnership Law* n.4, para. 57 and *Limited Partnerships: Reform of Limited Partnership Law – The Government Response to the Consultation,* n.4, para. 7, David Leask and Richard Smith, *Boom in New English 'Tax Haven' Firms after Scottish Crackdown*, The Herald (Glasgow, 27 July 2018).

[83] HM Government and UK Finance n.57, paras 1.3-1.4 and 1.14-1.16 and BEIS, *Corporate Transparency and Register Reform: Government Response,* n.5, para. 9.

a) Money Laundering

There is considerable evidence that SLPs and LLPs have been used to facilitate ML,[84] which compromises the integrity of financial institutions and markets, distorts the economy, and is an enabling activity for many other forms of organised crime.[85] For example, a report by Danske Bank into the ML of funds from Russia and other ex-USSR states through its branch in Estonia found that UK LPs and LLPs were the second most common type of non-resident client at the branch,[86] and Transparency International UK/belli¿ngcat investigated a number of cases which demonstrated SLPs being 'abused on an industrial scale, including for ML linked to high-end corruption'.[87] The UK's National Crime Agency estimates that hundreds of billions of pounds of corrupt funds could be laundered through the UK every year[88] and, although this is not solely through partnerships, in comparison to other countries involved in a recent major ML scandal involving Danske Bank, one witness noted 'clearly the worst of all is the United Kingdom….the role of the United Kingdom is an absolute disgrace. Limited liability partnerships and Scottish limited partnerships have been abused for absolutely years'.[89]

b) Tax Evasion and Avoidance

Another abuse of UK partnership status, often related to ML,[90] is tax evasion or avoidance. Despite the common perception that such behaviour is focussed on 'tax haven' jurisdictions, it is actually the OECD countries, including the UK, that are most at fault.[91] For example, it has been estimated that up to 95% of SLPs are merely tax evasion vehicles, including for criminal assets,[92] and concerns about tax evasion by

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[84] Maybe and Whewell, n.3, Barr, n.3, Gough, n.76.

[85] Home Office, *Action Plan for Anti-Money Laundering and Counter-Terrorist Finance* (2016), Liz Campbell, *Dirty Cash (Money Talks): 4AMLD and the Money Laundering Regulations 2017* 2 Crim LR 102, 102-103 (2018).

[86] Frances Schwartzkopff, Peter Levring and Alexander Weber, *UK Shell Companies Forced Into Danske Laundromat Limelight* (Bloomberg, 21 November 2018), Caroline Binham and George Parker, *Danske Bank Scandal Spurs UK Crackdown on Limited Partnerships* (Financial Times, 27 November 2018).

[87] TI-UK and bell¿ngcat n.2, 6.

[88] National Crime Agency (NCA), *National Strategic Assessment of Serious and Organised Crime 2018*, para. 102; see also HM Government and UK Finance, n.57, paras 1.2-1.3.

[89] Howard Wilkinson, former employee of Danske Bank and whistleblower, evidence to the European Parliament Special committee on Financial crimes, tax evasion and tax avoidance (TAX3) at its public hearing on 'Combatting Money-Laundering in the EU Banking system' 21 November 2018, available at <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20181121-0915-COMMITTEE-TAX3>.

[90] Young n.54, 585, Peter Alldridge, *What Went Wrong with Money Laundering Law?*, 29 and 70 (London; Palgrave Macmillan 2016).

[91] Findley et al. n.1, 170, Nicholas Shaxson, *The Finance Curse*, 268 (London; Bodley Head 2018), Tax Justice Network, *Corporate Tax Haven Index 2019*.

[92] Roger Mullin MP HC Deb 5 September 2016, vol 614, col 131.

partners have been raised by the Scottish government[93] and charities[94] as well as the media.[95] Tax evasion is not only illegal, but it deprives the government of funding for public services, even though the tax evaders may have benefited substantially from those services. Partnerships are also used widely for tax avoidance, which is legal but contrary to the spirit of the law, similarly reduces public funds, and often crosses the line into evasion[96] or is simply evasion which has not been detected because of inadequate public enforcement and well-resourced private advisers.[97] As the EU Commission noted:

> Tax evasion and avoidance deprive public budgets of billions of euros…[and] distort competition…..Innovation and competitiveness risk being stifled as small and medium sized enterprises (SMEs), which are the main source of employment in Europe, end up paying proportionately more taxes than larger companies that can afford to engage in aggressive tax planning. Tax avoidance can also increase the tax burden on labour, as governments compensate for the lost revenue by increasing taxes elsewhere. Fair taxation is…essential for the social contract between citizens and their governments.[98]

Both the UK[99] and the EU[100] recognise tax evasion as a predicate offence for ML, and FATF has proposed that tax crimes be targeted by anti-ML (AML) legislation.[101]

c) Other Criminal Activities

There is evidence that UK partnerships, particularly SLPs, have been used to facilitate bank fraud,[102] unregulated money transfer systems,[103] political bribery,[104] the sharing

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[93] Greig Cameron, *Scotland Holds its Breath on SLPs* (London, The Times, 29 March 2018).

[94] Oxfam, *Scottish Limited Partnerships – All Holyrood Parties Support Oxfam's Campaign* (10 December 2016) at <https://oxfamapps.org/scotland/2016/12/10/2016-12-slp-campaign-success/>.

[95] David Leask and Richard Smith, *Herald Research: Scots Tax Haven Firms Bypassing Transparency Laws* (Glasgow, The Herald, 11 September 2017).

[96] Richard Murphy, *Time to Get Rid of the Scottish Limited Partnership,* Tax Research UK (25 August 2016), Lee Hadnam, *Tax Planning with LLP's* [sic], Wealth Protection Report (2018).

[97] Shaxson, *The Finance Curse,* n.91, 240.

[98] Communication from the Commission to the European Parliament and the Council on further measures to enhance transparency and the fight against tax evasion and avoidance' (COM(2016) 451 final) 2.

[99] Peter Alldridge and Ann Mumford, *Tax Evasion and the Proceeds of Crime Act 2002* 25 Legal Studies 353, 361 (2005), Jack Davies, *Using the AML Framework for Enables of Tax Evasion: Some Practical Considerations* 37(12) Comp Law 372 (2016), 372.

[100] Directive 2015/849 on the prevention of the use of the financial system for the purposes of ML or terrorist financing (2015) OJ L141/73 (4MLD), Recital 14 of the Preamble.

[101] FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation,* n.58, 32 and 113-114.

[102] Gough, n.76.

[103] David Leask, *Unregulated Web Cash Transfer Systems Using Edinburgh Shell Companies As Fronts* (The Herald, 14 November 2016).

[104] Barr, n.3.

of child pornography online,[105] unregulated financial gambling,[106] digital bootlegging,[107] and major corruption in the former USSR including in relation to the arms trade[108] (with over 40% of the beneficial owners of SLPs being either nationals of a former Soviet country or companies incorporated there, as compared to only 0.1% of limited companies[109]). In Moldova, UK LPs and LLPs were used as part of complex financial structures to commit fraud involving in the theft of one-eighth of Moldova's annual GDP.[110] In the Ukraine, a UK LLP was implicated in moving 'billions' as part of the alleged theft of US $5.5 billion from one of the country's major banks.[111]

5. Regulatory Solutions

Attempts to combat the abuse of partnerships have largely focussed on regulation, which has been defined in a variety of ways[112] but is used here to denote 'use of the law to constrain and organise the activities of business'.[113] It thus encompasses business organisation regulation, financial regulation and criminal law.

Businesses typically exhibit resistance to regulation;[114] recent history demonstrates that even strong and sustained pressure for regulation is likely to result in acceptance of only limited regulation, with increased resistance to anything more extensive,[115] and legislative or regulatory capture.[116] That said, regulation, and in particular the

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[105] Kate Devlin, *Crackdown on Tax Haven Firms after Herald Investigation*, (Glasgow, The Herald, 16 November 2016), David Leask, *Bid for Talks to Stop Gangsters Zero Tax Firms* (Glasgow, The Herald, 9 November 2016).

[106] Leask and Smith, *Scam Financial Gambling Sites Are Fronted by Scots Shell Firms,* n.3.

[107] Leask, *Bid for Talks to Stop Gangsters Zero Tax Firms,* n.105.

[108] Devlin, n.105.

[109] Nienke Palstra and Sam Leon, *In Pursuit of Hidden Owners Behind UK Companies* (Global Witness, 6 February 2018).

[110] Kroll, *Project Tenor II Summary Report: Report Prepared for the National Bank of Moldova* 15, 22-23, 41, 43 and 53 <https://bnm.md/files/Kroll_%20Summary%20Report.pdf>, Moldovan Parliament, *Report CA nr 80*, 10-14 (14 November 2018), Ben Cowdock, *Tackling the Abuse of Scottish Limited Partnership Needs a UK-Wide Money Laundering Refor*m (TI-UK, 3 May 2018), Carlos Alba and Jordan Ryan, *British Firms 'Linked To Dirty Money Used Against Putin's Opponents*' (London, Sunday Times, 21 April 2019).

[111] Graham Stack, *Oligarchs Weaponized Cyprus Branch of Ukraine's Largest Bank to Send $5.5 Billion Abroad* (OCCRP, 19 April 2019).

[112] For example, Michael Clarke, *Regulation and Enforcement* 1(4) Journal of Asset Protection and Financial Crime 337 (2007) uses the term 'regulation' for informal self-regulation by a business and 'enforcement' for more formal regulation.

[113] Bridget Hutter, *Compliance: Regulation and the Environment*, 4 (Clarendon 1997). See also Laureen Snider, *Towards a Political Economy of Reform, Regulation and Corporate Crime* 9(1) Law & Policy 37, 38 (1987), Hazel Croall, *Combating Financial Crime: Regulatory Versus Crime Control Approaches* 11(1) Journal of Financial Crime 45, 45 (2003).

[114] Snider, n.113, 41.

[115] Snider, n.113, 41-42

[116] Berry, *Limited Partnership Law and Private Equity,* n.24, Shaxson, *The Finance Curse,* n.91, 13 and 66-68, Snider, n.113, 45-50 and 56.

relatively light touch of procedural regulation (and indeed ethical codes), is more likely to gain traction with the gatekeepers (professionals and other TCSPs), because of their training and reputation, than with the end users. However, the abuses clearly demonstrate that current regulation is inadequate, which reflects Fuller's argument that the morality of duty only leads to the most basic levels of regulation to ensure an ordered society, and that the morality of aspiration is required for the higher standard of individuals and societal excellence to be achieved.[117]

This section of the article analyses the inadequacies in the regulation of UK partnerships, and whether the government's proposed reforms will make a significant difference, and suggests strategies to enable these regulatory responses to provide effective solutions to the problem of abuse.

a) Disclosure of Participant Identity

Many of the abuses stem from secrecy as to the identity of those operating or financing partnerships.[118]

Some transparency as to the identity of partners/LLP members is provided by the business names legislation,[119] and by the LPA 1907[120] and the LLP legislation,[121] but only where the partners/members are recognised as such by the firm, which is frequently a matter of dispute.[122] In any event, LP partners only disclose their names and it is not clear how often the applicable sanctions[123] are invoked, and indeed whether the criminal offence is committed by the partners or only by the firm;[124] if the latter, then the deterrent effect is likely to be much less. The government has proposed that individual LP partners should have to register the same information as LLP members (address, birth date and country of ordinary residence) and additionally their nationality,[125] but there are no proposals to make corporate partners disclose the same information as corporate LLP members (registered office, registration number, the register on which it is entered and, if outside the EU,[126] legal form and applicable law), even though the use of corporate partners obscures ownership and enables lim-

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[117] Fuller, n.7, 5-9 and Smith, n.7, 257.

[118] HM Government and UK Finance, n.57, para. 7.1.

[119] Companies Act 2006, ss1200-1204.

[120] LPA 1907, s.10.

[121] LLP Act, s.2(2)(e) and (2Z), Companies Act 2006, ss162-165 and ss1139-1142 applied to LLPs by the LLP Regulations 2009 n.47, Regs 18 and 75.

[122] For example *Tiffin v. Lester Alldridge LLP* [2012] EWCA Civ 35, [2012] ICR 647, Elspeth Berry, *When Is a Partner/LLP Member Not a Partner/LLP Member? The Interface with Employment and Worker Status* 46(3) Ind LJ 309 (2017), 322-325.

[123] Companies Act 2006, ss1205-1206.

[124] Roderick I'Anson Banks (ed), *Lindley & Banks on Partnership*, para. 3-34 footnote 136 (London; Sweet & Maxwell 20th edn 2017).

[125] BEIS, *Limited Partnerships: Reform of Limited Partnership Law – The Government Response to the Consultation,* n.4, paras 25 and 27.

[126] This may change as a result of post-Brexit negotiations on the extent to which the UK continues to treat EU countries differently to third countries.

ited liability to be achieved. It is therefore difficult to trace potentially illegal networks by identifying the corporate partners on overseas company registers; one investigation found that it was impossible to ascertain where the corporate general partners of 19% of SLPs registered in 2016 were incorporated.[127] The government has also proposed that general partners in LPs, and designated LLP members, will need to undergo identify verification.[128] However, limiting verification to designated members would create a significant loophole since some or most LLP members could avoid identify verification, regardless of their role in setting up and/or managing the firm.

As to the identity of those who have influence or control over the business without formally being partners/members, all LLPs and some partnerships must state whether there is a PSC or relevant legal entity (RLE) (a legal person which would have been a PSC had it been an individual and which is itself subject to the PSC legislation[129]), and register the nature of their control, their name and address, and either their date of birth and nationality or their legal form, governing law and registration number.[130] Unfortunately, the PSC requirements are ineffective for a number of reasons.

First, they only apply to LLPs (and companies)[131] and 'eligible' Scottish partnerships.[132] 'Eligible' partnerships include SLPs and 'qualifying' Scottish general partnerships, the latter defined (by reference to the same term in the PAR 2008) as partnerships whose general partners are all either limited companies, or unlimited companies/Scottish partnerships all of whose members/general partners are limited companies.[133] Thus, although the extension of the PSC requirements to such partnerships resulted in a reduction of 80% in the numbers of SLPs being registered,[134] this was associated with an increase in the number of English, Welsh and Northern Irish LPs,[135] suggesting that the problem of opacity has not diminished but merely migrated to other vehicles. The application only to Scottish partnerships presumably reflects the government's desire to do no more than strictly required by Article 30 of the EU's

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[127] TI-UK and bell¿ngcat n.2, 12.

[128] BEIS, *Corporate Transparency and Register Reform: Consultation on Implementing the Ban on Corporate Directors* n.36, paras 24 and 26 (para 26 on p17: there are, in error, three paragraphs numbered 26 in the document) and *Corporate Transparency and Register Reform: Government response*, n.5, para. 17 note 2 (cf para. 70 which provides, presumably in error, that identity verification would apply to LLP members generally).

[129] Scottish Partnerships PSC Regulations n.48, Reg. 3(6) and (7), and s.790C as applied to LLPs by the LLP Regulations 2009 n.47, Reg. 31B.

[130] LPA 1907, s.8A and Scottish Partnerships PSC Regulations n.48, Regs 5-6 and 17-18 and Sch. 3; Companies Act 2006, ss12A, 790A, 790C-790K, 790M-790ZD and 790ZF-790ZG and Schs 1A and 1B, as applied to LLPs by the LLP Regulations 2009 n.47, Regs 3A and 31A-31N.

[131] The Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016, SI 2016/340 (LLP PSC Regulations).

[132] The Scottish Partnerships PSC Regulations n.48, BEIS, *Implementation of the Fourth Money Laundering Directive – Discussion paper on the Transposition of Article 30* (November 2016).

[133] PAR 2008, Reg. 3.

[134] UK government Press release, *New Measures to Tackle International Money Laundering* (10 December 2018), BEIS, *Limited Partnerships: Reform of Limited Partnership Law,* n.4, para. 53.

[135] BEIS, *Limited Partnerships: Reform of Limited Partnership Law,* n.4, para. 57.

Fourth Anti-Money Laundering Directive[136] (4MLD), which applies beneficial ownership requirements to 'corporate and other legal entities' and presupposes (incorrectly) that the beneficial ownership of a business vehicle which is an aggregate rather than an entity will necessarily be clear. In fact, although a person exercising influence over a partner may themselves be a partner under section 1 of the Partnership Act and thus be disclosed (and incur liability) as such, this depends on the partnership recognising them as a partner – and, as mentioned above, many partnership disputes involve exactly this issue. In any event, transposition of 4MLD does not explain the curious and complicated application of the PSC requirements to all SLPs but only to some Scottish general partnerships.

Second, the PSC register is not verified and therefore does not reliably or comprehensively disclose all PSCs but is 'simply a voluntary honesty box arrangement';[137] just six people are responsible for monitoring the integrity not only of the whole PSC register but of the entire Companies House register.[138] The House of Commons European Scrutiny Committee noted that there 'remain outstanding questions about the manner in which the information on beneficial ownership of [businesses] registered in the UK is verified by Companies House and [HMRC], which manage these registers on behalf of the Government'.[139] FATF has said that the UK should 'improve the quality of information available on the PSC register to ensure that the information is accurate and up-to-date',[140] noting that information 'is not verified for accuracy which limits its reliability'.[141] The scale of genuine error alone is evident from a Companies House pilot which targeted 250 suspected non-compliant companies and resulted in 70% of them correcting their PSC details.[142] SLPs in particular have been noted as having 'a particularly poor record. Four in five SLPs have not named a PSC',[143] and Scotland's First Minister Nicola Sturgeon noted that although the extension of the PSC requirements to some Scottish partnerships was 'an important first step in preventing their misuse…. there continue to be revelations of criminality being facilitated through SLPs. More needs to be done by the UK Government.'[144] Thus the important task of verifying PSC compliance is devolved to journalists and the general public,

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[136] Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (2015) OJ L141/73.

[137] Richard Murphy of the Tax Justice Network quoted by TI-UK and bell¿ngcat n.2.

[138] TI-UK and bell¿ngcat n.2, 20, Palstra and Leon n.109, Jonathan Fisher and Anita Clifford, *Looking Ahead to 5MLD,* F & C Law 3, 3-4 (June 2018).

[139] 12th Report of Session 2017-19 (HC 301-xii), para. 14.9.

[140] FATF, *Anti-money Laundering and Counter-Terrorist Financing Measures – United Kingdom: Mutual Evaluation Report,* 246 (December 2018).

[141] FATF, *Anti-money Laundering and Counter-Terrorist Financing Measures*, n.140, 3.

[142] OpenOwnership and Global Witness, *Learning the Lessons from the UK's Public Beneficial Ownership Register,* 3 and 9 (October 2017).

[143] Maybe and Whewell, n.3.

[144] Nicola Sturgeon, First Minister's Question Time 22 March 2018 (SP OR cols 24-25). The Scotland Act 1998, s.9 and Sch. 5, Pt II, C1, provides that '[t]he creation, operation, regulation and dissolution of types of business association' are matters reserved to the UK Parliament.

and although this could be a useful supplement to Companies House data checking,[145] it cannot and should not be a substitute for it. The lack of verification also surely means that the UK is in breach of the requirement in Article 30 of 4MLD that its PSC register is 'adequate, accurate and current', and certainly (as the government itself recognises[146]) of the amendments to Article 30 in the EU's Fifth Anti-Money Laundering Directive[147] (5MLD) which require governments to put in place mechanisms to ensure this.

What is needed is for the government to develop a capability to identify and investigate suspicious activity revealed in the data in coordination with HMRC and Companies House, by mandating and resourcing Companies House to verify beneficial ownership data[148] and sanction non-compliance, close loopholes by making it more difficult to file statements saying there is no beneficial owner, and check up on corporate PSCs since they can obscure the real controllers.[149] It is true that Companies House is 'a registrar, not a regulator',[150] but the registration requirements include PSC disclosure; and verification by Companies House itself is feasible, as evidenced by the integrity project conducted by it prior to the abolition of bearer shares (where shareholder names were not on a physical certificate, and so ownership was concealed and could be transferred without documentation). This involved Companies House checking data relating to 75,000 companies and 5,000 directors in order to identify 1,300 companies as having bearer shares, and then working with them to ensure that the shares were removed;[151] an equivalent project could have been – and still could be – adopted in relation to PSC information.[152]

In order to comply with 5MLD amendments obliging entities which conduct customer due diligence to report discrepancies between the beneficial ownership data they find and that on the public register,[153] the ML Regulations have been amended to require such entities to report discrepancies to Companies House.[154] The government has further proposed that Companies House be enabled to compare its data

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[145] HM Treasury and Home Office n.56, para. 9.32, Lord Henley, Evidence to the Treasury Committee inquiry into Economic Crime, 22 October 2018.

[146] HM Treasury, *Transposition of the Fifth Money Laundering Directive:Cconsultation*, para. 8.6 (April 2019).

[147] Directive 2015/849 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (2015) OJ L141/73.

[148] TI-UK and and bell¿ngcat n.2, Recommendation 2, Bond Anti-Corruption Group, *Joint Response to the Financial Action Task Force's Mutual Evaluation of the UK,* Section 4 (December 2018), Campbell, n.85, 119.

[149] Global Witness, *The Companies We Keep,* 26-31 (July 2018), Nybord & Rørdam, *Newsletter – New Requirement Regarding Registration of Beneficial Owners,* <https://nrlaw.dk/newsletter-new-requirement-regarding-registration-of-beneficial-owners/?lang=en>.

[150] HM Treasury and Home Office, n.56, para. 9.32.

[151] Companies House, Annual Report and Accounts 2015/16 (July 2016), 5.

[152] TI-UK and bell¿ngcat n.2, 17.

[153] 4MLD, Art. 30(4) as amended by 5MLD, Art. 1(15)(b).

[154] ML Regulations 2017, Reg. 30A.

against data held by other bodies.[155] It has also proposed that PSCs be subject to voluntary identity verification (albeit by the PSCs themselves rather than by the partners or LLP members), with a notification on the public register if a PSC is not verified.[156] This could deter false information and make the task of identification easier,[157] but to a lesser extent than its initial proposals for mandatory verification with criminal sanctions on defaulting PSCs.[158] Further, the government has not confirmed what evidence will be required – for example, Denmark requires beneficial owners to submit a scanned copy of their passport or other national ID[159] – and without sufficient additional resources Companies House will be unable to check the information supplied. In any event, these reforms do not address the problem of PSCs not being disclosed at all.

A third deficiency of the PSC regime is that investigations into illegal activities are made unnecessarily difficult and time consuming, or indeed impossible, because it is difficult to ascertain which records at Companies House refer to the same person if there are many people with the same or a similar name.[160] What is needed is a mechanism to enable public users to easily identify how many businesses a partner/member is associated with,[161] and increase the speed at which potentially suspicious corporate networks can be identified. The government has proposed that certain individuals will have to have a single verified account to which their roles in multiple firms can be linked,[162] but the proposals exclude limited partners and, as discussed above, are ambiguous as to whether they apply to all LLP members or merely designated members.

Finally, the test for significant control lacks clarity and is, in any event, set at too high a threshold to address the problem of secret beneficial control. A PSC is any individual who has the right to more than 25% of the surplus assets of a firm on winding up or of the voting rights, or has the right to appoint or remove a majority of its managers, or has the right to (or actually does) exercise significant influence over it or over the activities of a firm which is not a legal person and whose partners meet any of the preceding conditions.[163] However, the 25% threshold is arbitrary, can be circumvented by dividing ownership into smaller elements,[164] and is too high since much lower percentages can still be significant, especially in sectors with significant

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[155] BEIS, *Corporate Transparency and Register Reform: Consultation,* n.5, paras 208-210 and *Corporate Transparency and Register Reform: Powers of the Registrar* (December 2020), paras 11-24.

[156] BEIS, *Corporate Transparency and Register Reform: Government Response,* n.5, paras 119-122.

[157] OpenOwnership and Global Witness, n.142, 9.

[158] BEIS, *Corporate Transparency and Register Reform: Consultation*, n.5, paras 83-91.

[159] Global Witness, *The Companies We Keep,* n.149, 27.

[160] OpenOwnership and Global Witness, n.142, 7.

[161] TI-UK and bell¿ngcat n.2, 12.

[162] BEIS, *Corporate Transparency and Register Reform: Government Response,* n.5, paras 13 and 157-160.

[163] Scottish Partnerships PSC Regulations n.48, Reg. 3(4) and Sch. 1 Pt 1 and the Companies Act 2006, Sch. 1A as applied by the LLP PSC Regulations, Sch. 1.

[164] Campbell, n.85, 118-119.

corruption risks.[165] Furthermore, it will not be clear in advance what percentage of assets a particular partner will receive; many partnership agreements provide for the priority repayment of partner capital with the surplus distributed in different proportions.[166] The voting rights threshold is also difficult to transpose to partnerships, as the decisionmaking structure is entirely different to the companies for which the PSC legislation was originally designed.[167]

b) Disclosure of Accounts Where There Is Limited Liability

Although LLPs (and companies) must disclose their accounts to third parties (at Companies House),[168] general partnerships and LPs are not normally required to do so. By way of exception, the PAR 2008, which implements an EU Directive,[169] attempt to ensure that in circumstances in which all partners have limited their liability, the partnership accounts are disclosed. However, the PAR 2008 have a significant loophole in the definition of the 'qualifying' partnerships to which they apply. As discussed above in the context of the PSC Regulations which use the same definition, these are partnerships whose general partners are all either limited companies, or unlimited companies/Scottish partnerships all of whose members/general partners are limited companies.[170] The PAR 2008 thus only apply where partners achieve limited liability through use of limited companies, and not where they do so through LLPs. This loophole is illogical given that the liability shield offered by a UK LLP is similar to that offered by a UK limited company,[171] and should be closed. However, although Brexit will enable the UK to unilaterally amend the PAR 2008, such an amendment is unlikely because the EU Commission acted on information from the UK government when specifying the UK limited liability entities covered by the Directive,[172] and Brexit has been presented by the government as an opportunity for reduced regulation;[173] 'those who were driving the Brexit campaign are also those who would have the most to lose if the UK increased financial transparency in line

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[165] OpenOwnership and Global Witness, n.142, 7.

[166] Secondary Legislation Scrutiny Committee, *Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017; Information about People with Significant Control (Amendment) Regulations 2017; Scottish Partnerships (Register of People with Significant Control) Regulations 2017* HL 2017-19, 8-II, para. 4.

[167] Partnership Act 1890, s.24(5).

[168] Companies Act 2006, s.441, applied to LLPs by the LLP Accounts Regulations n.47, Reg. 17.

[169] Directive 2013/34 on the annual financial statements, consolidated financial statements and related reports of certain type of undertakings [2018] OJ L182/18 (previously Directive 90/605 [1990] L317/60).

[170] PAR 2008, Reg. 3.

[171] Helen Parsonage and Daniel Faundez (Osborne Clarke), *Reform of UK Limited Partnership Law: Government Response to Consultation* (Lexology, February 18 2019).

[172] Email to the author from the EU Commission (DG Financial Stability, Financial Services and Capital Markets Union Unit 3B – Accounting and Financial Reporting), 23 July 2015.

[173] *Government Response to the House of Lords European Committee Report, Brexit: The Future of Financial Regulation and Supervision,* paras 26 and 30 and HL Deb 6 June 2018, vol 791, col 1340.

with the Fourth Directive to combat tax frauds and financial crimes….high profile voters who signed the Brexit support letter include offshore-tax planners working for the super-rich and the heads of dormant businesses'.[174]

A second problem is that even when the PAR 2008 do apply, it is difficult for third parties to establish this fact. There is no mechanism for partnerships to state that the this is so, and they are not required to state the legal form of their partners or specify whether non-EU partners have limited liability under their governing law, which might enable third parties to determine whether the PAR 2008 apply.

Third, it is then equally difficult for third parties to locate the accounts, because there is no mechanism to attach the accounts to the records of an LP at Companies House, or for a qualifying general partnership to register in order to attach its accounts. Instead, partnership accounts are disclosed through the indirect and complicated mechanism of being appended to the accounts of a corporate partner filed at Companies House (or another EU domestic registry) or, if no partners are UK or other EU companies, being made available at the partnership's principal place of business in the UK or, if it has no such place, at at least one partner's principal place of business or head office in the UK or, in default of any of the above, at a nominated UK address.[175] The result is that a third party seeking to find a partnership's accounts must be aware of and understand the PAR 2008 in the first place, establish that the status of the general partners is such that accounts must be disclosed and the location where the accounts should be disclosed, and then – if this location is not Companies House – contact or travel to that location and find the accounts. The solution is to require LPs to state on the register whether the PAR 2008 apply to them and, if so, where their accounts are disclosed and, if on a register, under what company name(s) and number(s). General partnerships to which the PAR 2008 apply should be required to register such statements in the same way as Scottish general partnerships to which the PSC legislation applies are required to register either their PSC details or a statement that there is no PSC.[176] The vast majority of general partnerships would not be affected since they have one or more individual partners, and both LPs and corporate partners are already familiar with the register so this extra requirement would not be burdensome, yet it would provide essential information for regulators and law enforcement agencies. At the very least, general partnerships should be required to state on business documents and at their premises the fact that their accounts are disclosed and the location at which they are disclosed, similarly to the disclosure of business names discussed above.

The final problem is that the obligation to disclose accounts is not enforced by Companies House. This may be because of under-resourcing, and the difficulties outlined above in assessing whether the obligation applies and whether it has been complied with. However, it may simply be that it has been overlooked, as partnership issues so often are. Certainly it has not been included in the government's recent

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[174] Young, n.54, 585.

[175] Regs 5, 6(2), and 6(3)(a)(i)-(iii).

[176] Scottish Partnerships PSC Regulations n.48, Regs 9, 19 and 23.

consultation proposing the introduction of a power for the Registrar of Companies to query financial information before it is published.[177]

c) Disclosure of Other Information

Beyond the identity and accounting information discussed above, the information which partnerships must disclose is minimal. Potentially most significant in the context of the abuses is that on first registration LPs must supply the name and reference of the presenter,[178] but although this could enable Companies House to track who is forming suspect LPs en masse, lack of resourcing means that it does not; and for LLPs this information is optional[179] – which is somewhat odd, given that they are equally implicated in abuses. The government has also proposed that the obligation to file an annual confirmation that all registered information is correct be extended from LLPs and eligible Scottish partnerships (as defined above) to all UK LPs,[180] and although LPs are already obliged to update changes at Companies House within 7 days,[181] annual monitoring might deter those wishing to use an LP for illegal activities since it requires regular and on-going regulatory engagement.

d) Judicial Review of Registration

It is well established that Companies House is entitled to refuse to register a company formed for an illegal purpose,[182] because statute explicitly prohibits a company from being formed for an unlawful purpose.[183] If Companies House decides to register a company which has an unlawful purpose, it is also established that the Attorney General is entitled to seek judicial review of that decision, with a view to quashing the registration. Indeed, the requirement of 'lawfulness' is wider than merely not constituting a criminal offence or civil wrong.[184] In *R v Registrar of Companies ex parte Attorney General*[185] the Attorney General was successful in an application to quash the registration of a company, on the basis that the purpose of the company – to carry on the business of prostitution – was immoral and therefore illegal for being against public policy, even though it was not actually a criminal offence.

These same options – of refusal of, or challenge to, registration – must also apply to an LLP, since LLP incorporation is conditional on the members being associated

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[177] BEIS, *Corporate Transparency and Register Reform: Consultation on Improving the Quality and Value of Financial Information on the UK Companies Register* (December 2020), paras 74-77.

[178] Forms LP5, LP5(s) and LP7.

[179] Form LLP IN01.

[180] BEIS, *Limited Partnerships: Reform of Limited Partnership Law – The Government Response to the Consultation,* n.4, para. 24.

[181] LPA 1907, s.9.

[182] *Bowman v Secular Society Ltd* [1917] AC 406, 439.

[183] Companies Act 2006, s7(2).

[184] I'Anson Banks, n.124, para. 8-04 and Whittaker and Machell, n.37, paras 2.11-2.12.

[185] [1991] BCLC 476.

for carrying on a lawful business.[186] These options may also to LPs. Lawfulness is not specified as a condition for registration, but a partnership cannot be formed on the basis of an illegal contract,[187] and both LPs and general partnerships are dissolved automatically if the business which they carry on is unlawful (or if it is illegal for the particular partners to carry on that business).[188]

However, in any event, these options are unlikely to provide a solution to the problem of abuse in more than an occasional case. First, the ability of either Companies House to refuse registration or the Attorney General to challenge it is likely to be hampered by lack of knowledge of the illegal activities, not least because neither LPs nor LLPs are required (or indeed able) to register their internal agreements, although LPs (but not PFLPs) are required to register the nature of the business.[189] In contrast, in *ex parte Attorney General* the Attorney General was alerted to the illegality by the fact that the company had stated its (illegal) objects in its registration documents, as companies were then required to do. Although the government's proposals to enable the Registrar to query information before a firm is registered, and to remove her obligation to accept any application for registration that is validly submitted,[190] are to be welcomed, it remains to be seen whether Companies House will be adequately resourced to allow it to conduct sufficient checks to ensure that queries are raised whenever the information submitted (or not submitted) warrants it. In any event, the illegality will not always be evident from that information. Second, only the Attorney General may institute judicial review proceedings; other potential applicants are bound by s8C(4) of the LPA and s3(4) of the LLP Act which provide that a certificate of registration is conclusive evidence of LP existence or LLP incorporation.[191] Finally, many of the abuses have taken place outside the UK and the power of Companies House or the Attorney General to take action in these circumstances is uncertain,[192] as Jonathan Hardman has also discussed.[193]

e) Disqualification of Partners/LLP Members

The disqualification regime under the UK's Company Directors Disqualification Act 1986 (CDDA 1986)) enables those deemed unfit to be concerned in the management of a business to be disqualified from so doing, and this applies not only to company

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[186] LLP Act, s2.

[187] I'Anson Banks, n.124, paras 8-01 and 29-12 and Mark Blackett-Ord and Sarah Haren, *Partnership Law*, paras 4.1-4.7 and 4.20 (London; Bloomsbury Professional 5th edn 2015).

[188] Partnership Act 1890, s34, applied to LPs by the LPA, s7.

[189] LPA, s8A(2).

[190] BEIS, *Corporate Transparency and Register Reform: Government Response*, n.5, para. 23.

[191] Neither section binds the Crown (*Bowman,* n.182, 439-440).

[192] Blackett-Ord and Haren, n.187, para. 4.4, Whittaker and Machell, n.37, para. 2.12, *Chitty on Contracts*, paras 16-055-16-062 (London; Sweet and Maxwell 33rd edn 2019). See also *Trans-Oil International SA v Savoy Trading LP and Melnykov* [2020] EWHC 57 (Comm) on the obstacles to English courts assuming jurisdiction over foreign partners in UK partnerships.

[193] Hardman, n.8, section 5.

directors but also to LLP members[194] and to partners.[195] However, this is of limited use in combatting the abuse of partnerships. First, the power to disqualify only arises where the firm is insolvent and indeed, in the case of partners it may be that the power is further limited to circumstances in which the firm is wound up.[196] Second, the power to disqualify only enables disqualification as a company director and, at least in some circumstances, as an LLP member. It does not enable disqualification as a partner,[197] and although it enables LLP members to be disqualified from acting as LLP members, it is far from clear that it enables partners (or company directors) to be so disqualified.[198]

f) AML Regulation

AML legislation extends far beyond tackling partnership abuses and a full discussion of it is beyond the scope of this article, but it is important to note its role in combating the abuses by both partners and their professional advisors. It has two key strands: criminalisation under the Proceeds of Crime Act 2002 (POCA) of anyone involved directly in ML[199] – in other words, the money launderers;[200] and criminalisation and regulation of certain professionals and financial institutions under POCA and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payee) Regulations 2017[201] (ML Regulations) – in other words, the money launderettes which facilitate ML. The ML Regulations implement 4MLD and apply to, inter alia, financial institutions, accountants, tax advisers, lawyers and TCSPs. They impose regulatory requirements including carrying out risk assessments and due diligence and enquiring into beneficial ownership,[202] and provide supervisory bodies with statutory investigation powers. The supervisory authorities for members of the professions are generally their professional bodies; for TCSPs which are regulated persons it is the Financial Conduct Authority (FCA); and for all other TCSPs it is HMRC.[203] Both the supervisors and the supervised must identify and assess the international and domestic risks of ML to which the latter are subject.[204]

However, the AML legislation is defective in many respects. For example, the ML Regulations require only minimal due diligence in relation to 'low risk' business relationships or transactions,[205] fail to explain how to assess risk, and refer to 'high'

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[194] LLP Regulations 2001 n.62, Reg 4(2) and Sch 2, Pt II.

[195] The Insolvent Partnerships Order 1994, SI 1994/2421, Art 16 and Sch 8.

[196] Elspeth Berry, *A Weak Vessel? Why The Insolvency Regime for Partnerships and LLPs Is Failing to Protect the Salvage or Diminish the Number of Wrecks* 6 NibleJ 116 (2018).

[197] *Re Verby Print for Advertising Ltd* [1998] BCC 652 (Ch) 668.

[198] Berry, *A Weak Vessel?,* n.196, 116-117.

[199] POCA, ss327-333A and Sch. 9.

[200] Guy Stessens, *Money Laundering: A New International Enforcement Model*, 113 (Cambridge; CUP 2000).

[201] SI 2017/692.

[202] ML Regulations, Regs 76-92.

[203] ML Regulations, Reg. 7(1).

[204] ML Regulations, Regs 17-18.

[205] Ben Cowdock, *UK Rushes to Meet Deadline, But Do They Get Full Marks?* (TI-UK, 7 July 2017).

and 'low' risk without explaining these terms.[206] They also fail to support HMRC's need to obtain information to combat ML and tax evasion; in *Wilsons Solicitors LLP v. Commissioners for HMRC*[207] an LLP TCSP was not required to provide data to HMRC because the records which it was required to keep under the ML Regulations were not sufficient to make it a data holder. It can also be difficult to prosecute corporate bodies such as LLPs.[208]

Possible solutions include increasing the amount of information disclosed publicly by supervisors and introducing minimum standards for regulatory outcomes in order to provide greater uniformity across the AML regime.[209] FATF has recommended that the UK 'substantially' increase the resources of its Financial Intelligence Unit (UKFIU) which analyses financial intelligence gathered from the suspicious activity reports (SARs) (which Part 7 of POCA obliges anyone who suspects ML to submit to the National Crime Agency), and address both its low number of high end prosecutions and its low number of convictions for failure to disclose ML which is inconsistent with the UK's considerable risk profile.[210]

A further defect in the AML regime is lack of action against TCSPs for failing to administer proper AML procedures,[211] despite a key feature of the abuses being TCSPs selling UK partnerships to wrongdoers abroad with no regard to their use,[212] and TCSPs being responsible for over 75% of SLP registrations.[213] The UK government's National Risk Assessment of ML in 2017 (NRA 2017) noted 'negligent or complicit' TCSPs facilitating ML, abuse of structures set up by them, and inconsistencies in TCSP supervision.[214] HMRC, which is their default supervisory authority, has insufficient resources to properly enforce the legislation[215] and offers none of the additional assistance offered by other regulators.[216] The House of Lords expressed concerns about the additional strain placed by the ML Regulations on all regulators, but in particular HMRC which had faced reduced budgets and increased demands in recent years.[217] Other commentators note that HMRC 'has a poor record on enforcement against ML failings, providing little disincentive to TCSPs considering lucrative

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[206] Campbell, n.85, 102-103.

[207] [2018] UKFTT 627 (TC).

[208] Ministry of Justice, *Corporate Liability for Economic Crime: Call for Evidence* (January 2017), TI-UK, *Corporate Liability for Economic Crime: Submission from Transparency International UK* (March 2017).

[209] Davies, n.99, 376.

[210] FATF, *Anti-money Laundering and Counter-Terrorist Financing Measure,s* n.140, 12 and 40.

[211] Chan, n.77.

[212] Chan, n.77.

[213] BEIS, *Review of Limited Partnership Law – A Call for Evidence,* n.4, 13.

[214] HM Treasury and Home Office, n.56, paras 9.28. See also Graham Stack and Guntars Veidemanis, *Latvia Banks Fuel Scotland's Shell Company 'Factory' Linked to Moldova Fraud* (bne IntelliNews, 3 July 2015) and Graham Stack, *Mystery Latvian Linked to Scottish Shell Companies Denies Role in $1bn Moldova Bank Fraud* (bne IntelliNews, 9 November 2015).

[215] Maureen Sugden, *Staff Shortages 'Threaten Crackdown on Shell Firms* (Glasgow, The Herald, 30 April 2018).

[216] HM Treasury and Home Office, n.56, para. 1.27.

[217] HL Deb 6 November 2017, vol 785, cols 1649-1650.

clients which are nonetheless suspicious and constitute a high money laundering risk.'[218]

What is required, at very least, is a separate professional, regulatory body for TCSPs, together with a duty on TCSPs to arrange professional indemnity insurance and monitor training and management of the AML compliance framework, which would reduce the risk of non-compliance and ensure that TCSPs work at least to the same regulatory standards, and develop the same structures, as other professionals working in the area. This would also leave HMRC the space to concentrate on those entities that fail to achieve the standards of their professional bodies rather than using spot checks across the board.

However, this alone is not enough. The NRA 2017 suggested that professionals, including lawyers and accountants, pose equal – and in the case of accountants, greater – risks of ML than other TCSPs, while the Solicitors Regulation Authority (SRA) has acknowledged that AML training 'does not achieve its goal of helping lawyers to identify and prevent money laundering',[219] FATF has criticised the 'significant weaknesses' in AML supervision and particularly the 'significant deficiencies' of the 22 legal and accountancy supervisors,[220] and conflicts of interest result from the role of many of those supervisors in acting both as advocate and regulator.[221] Furthermore, the existence of 25 different supervisors in total has led to fragmentation and inconsistency[222] and the regime is expensive for regulators.[223] The burden on regulators may increase as Brexit devolves EU regulation to under-resourced domestic regulators, and EU scrutiny (in particular, by a well-resourced European Parliament) of both legislation and the regulators to the UK parliament.[224] It also seems likely that the UK will be excluded from EU-wide intelligence sharing through the Europol Information System (EIS),[225] which has been described as 'arguably one of the world's most valuable assets when it comes to sharing information across borders to tackle crime [including] money laundering'.[226]

The government has proposed that applications to register LPs will only be able to be submitted by presenters who can evidence registration with an AML supervisory

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[218] Ben Cowdock, *Tackling the Abuse of Scottish Limited Partnership Needs a UK-Wide Money Laundering Reform,* n.110.

[219] SRA, *Ethics Guidance: The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (2 March 2018).

[220] FATF *Anti-money Laundering and Counter-Terrorist Financing Measures,* n.140, 2 and 123. See also Hannah Gannagé-Stewart, *In a Spin?* 162/2 Solicitors Journal 22 (2019).

[221] Bond Anti-Corruption Group, n.148, Section 3.

[222] Bond Anti-Corruption Group, n.148, Section 3.

[223] Terence C Halliday, Michael Levi and Peter Reuter, *Global Surveillance of Dirty Money: Assessing Assessments of Regimes to Control Money-Laundering and Combat the Financing of Terrorism*, paras 111-116 (American Bar Foundation, 2014).

[224] HL Deb 6 June 2018, vol 791, cols 1342-1364.

[225] Andi Hoxhaj, *The UK's Policy Response to Serious and Organised Crime after Brexit* (2 July 2020), <https://www.globalpolicyjournal.com/blog/02/07/2020/uks-policy-response-serious-and-organised-crime-after-brexit>.

[226] Aziz Rahman, *Just a Thought…* Taxation (23 May 2019) at 21.

authority or equivalent overseas supervisory authority.[227] However, improved presenter regulation will only be effective if resources are allocated to Companies House to monitor and enforce it.[228] The government also proposes mandatory self-verification of presenter identity and rejection of proposed incorporations or filing updates from non-verified persons,[229] which would reduce the likelihood of abuse by diminishing anonymity. It would also assist Companies House in verifying other information, because the presenter would be identifiable and contactable. However, Companies House should also be mandated (and resourced) to put in place systems to identify TCSPs who act in the formation of multiple LPs and to report them to HMRC,[230] both in order to deter misuse and to provide useful data to HRMC.

Ultimately, failings in AML oversight are symptomatic of a wider problem with financial regulation in the UK. Emphasis on the language of 'compliance' rather than 'crime' undermines the moral role of the criminal law[231] in relation to both AML and tax evasion, and legal professional privilege has been asserted to protect against investigations into wrongdoing, by enforcement agencies[232] and journalists.[233] Banking scandals and collapses in recent years indicate that the UK has 'the worst record of any [country]'[234] and a House of Lords Committee Report on Financial Regulation[235] was described by other members of the House as 'dangerously' kind to the regulators;[236] they noted that pursuing 'market-friendly' and internationally competitive financial service regulation inevitably results in 'the least-regulated structure' and 'a race to the bottom'.[237] Related to this is the unwillingness of the UK to act against Crown dependencies[238] and British Overseas territories.[239] Again, Brexit may weaken attempts to combat abuses by enabling the UK to avoid EU attempts to combat secrecy

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[227] BEIS, *Corporate Transparency and Register Reform: Government Response* n.5, paras 19, 96 and 103, and *Limited Partnerships: Reform of Limited Partnership Law – The Government Response to the Consultation* n.4, para. 11.

[228] Bond Anti-Corruption Group, n.148, Section 4, Law Society of Scotland, *Consultation Response*, n.21, response to Q2.

[229] BEIS, *Corporate Transparency and Register Reform: Government Response,* n.5, paras 126-129.

[230] Law Society of Scotland, *Call for Evidence Response – BEIS Call for Evidence: Review of Limited Partnership Law,* 12 (March 2017).

[231] Croall, n.113, 46.

[232] Rebecca Mitchell and Michael Stockdale, *Legal Professional Privilege in Corporate Criminal Investigations: Challenges and Solutions in the Modern Age* 82(4) JCL 321(2018).

[233] BBC, *Appleby, Guardian News and Media Limited and the BBC Settle Paradise Papers Dispute* (4 May 2018) <https://www.bbc.co.uk/mediacentre/statements/appleby-paradise-papers>.

[234] Lord Davies of Stamford, HL Deb 6 June 2018, vol 791, col 1356.

[235] European Union Committee, *Brexit: The Future of Financial Regulation and Supervision,* HL 2017-19, 66-XI.

[236] Lord Davies of Stamford, HL Deb 6 June 2018, vol 791, col 1355.

[237] Baroness Kramer, HL Deb 6 June 2018, vol 791, cols 1360-1361.

[238] Jersey, Guernsey and the Isle of Man.

[239] Rob Byrne, *Can MPs Force Laws on the Crown Dependencies?* BBC (3 April 2019), <https://www.bbc.co.uk/news/world-europe-guernsey-47525455, Mark D'Arcy/BBC>, *Tax Haven Retreat Underlines Weakness in Com*mons (BBCnews, 4 March 2019) <https://www.bbc.co.uk/news/uk-politics-parliaments-47445153>, Carey Olsen*, Bermuda's Beneficial Ownership Registers and Privacy: Status Update and Further Observatio*ns (Carey Olsen International Law Office, 2 May 2019).

in such jurisdictions,[240] and of course the inaccuracy of the UK's own register provides a counter argument to the introduction of registers elsewhere.[241]

g) Anti-tax Avoidance and Evasion Regulation

As with AML legislation, anti-tax evasion and avoidance laws extend far beyond tackling the abuse of partnerships,[242] and a full discussion of the detail is similarly beyond the scope of this article. However, as it is potentially an important part of the regulatory landscape, the reasons why it has not been successful in combating the partnership abuses need to be considered.

First, to quote from a House of Commons briefing paper, UK tax law has historically been 'specifically targeted rather than purposive' with the result that as soon as the government acts against particular schemes, new schemes are invented to circumvent that law, which in turn results in further legislation, resulting in 'an "arms race" between the revenue authorities and Parliamentary counsel on one side, and on the other, taxpayers aided and abetted by the legal profession'.[243]

Second, there is has been collusion between accountants and lawyers to enable clients to evade tax.[244]

Third, HMRC[245] and professional bodies[246] have been complacent that the existing AML regime was sufficient to cover negligent enablers of tax evasion, and although the UK has taken additional measures in recent years,[247] including providing criminal and civil sanctions for enabling offshore tax evasion[248] and making all types of partnership criminally liable if they fail to prevent their agents and employees facilitating tax evasion,[249] tax avoidance and evasion remain significant problems.[250] The General

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[240] Young, n.54, 585.

[241] Osborne Clarke, *UK Companies House Gets Real about Corporate Transparency* (Osborne Clarke Insights, 15 May 2019).

[242] Natalie Lee, *Revenue Law: Principles and Practice*, ch. 3 (London; Bloomsbury Professional 34th edn 2016), HMRC, *Tackling Offshore Tax Evasion: Civil Sanctions for Enablers of Offshore Evasion*, Annex A (July 2015), Aileen Barry*, Evasion, Avoidance Or Mitigation?* 19 Professional Adviser 18 (July 2012), Prem Sikka, *No Accounting for Tax Avoidance* 86(3) The Political Quarterly 427 (2015) and *Why Combatting Tax Avoidance Means Curbing Corporate Power: Shows How a Tax Avoidance Industry Has Facilitated the Corporate Capture of UK Policymaking* 94(1) Criminal Justice Matters 16 (2013).

[243] Antony Seely, *House of Commons Library Briefing Paper: Tax Avoidance and Tax Evasion* No 7948 3 (11 March 2019).

[244] Tanina Rostain and Milton C Regan Jr, *Confidence Games: Lawyers, Accountants and the Tax Shelter Industry,* 326-327 and 329-331 (Cambridge, MA; MIT Press 2014).

[245] HMRC, *Tackling Offshore Tax Evasion,* n.242, para. 4.16.

[246] For example, ICAS, *Response to the HMRC Consultations on Tackling Offshore Tax Evasion,* para. 9 (October 2015). See also Davies, n.99, 373.

[247] HM Treasury, *Tackling Tax Avoidance, Evasion and Non-Compliance* (November 2017)

[248] Finance Act 2016, Part 10 and Schedule 20, and the Finance (No 2) Act 2017, Schedule 16.

[249] Criminal Finances Act 2017, ss44-52.

[250] Global Witness, *Evidence Submitted to the Treasury Sub-Committee: Tax Avoidance and Evasion Inquiry* (23 May 2018), <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-subcommittee/tax-avoidance-and-evasion/written/83331.html>.

Anti-Avoidance Rule (GAAR) applicable across the UK is based on the narrow test of 'abuse'[251] rather than the significantly wider test of 'artificiality' adopted for Scotland's devolved taxes[252] which allows Revenue Scotland to take action against tax avoidance arrangements which are considered to be artificial, even if they otherwise operate within the letter of the law.

Finally, there is the potentially adverse impact of Brexit, as much of impetus for tackling tax evasion and avoidance comes from the EU.[253] When the UK leaves the EU, it may take advantage of the opportunity to weaken its anti-avoidance measures or at least to take no further steps to strengthen them.[254]

h) Proposed Mandatory Link with the UK

A further regulatory method of combating abuse would be to ensure a link with the UK. Although the Partnership Act does not explicitly require that a general partnership carry on business in the UK, it is unlikely that it would be recognised by a UK court if it had no activity there.[255] However, neither an LP nor an LLP are required to have a substantive presence in the UK.[256] An LLP need only have a registered office in one of the countries within the UK,[257] and an LP need only have a proposed principal place of business in the UK on first registration.[258] While there is no law directly on the point, it seems that despite the assertion by Companies House that an LP can only move 'anywhere in the UK',[259] an LP is not required to maintain its principal place of business in the UK after initial registration, or conduct any business there.[260] Thus the activities of UK registered partnerships can be removed from UK regulatory oversight as discussed above,[261] making it more difficult for abuses to be identified, let alone combatted. Such partnerships are also unlikely to bring significant economic benefit to the UK.

The government has therefore proposed that every UK LP will be required to maintain a link with the UK by complying with one of three alternative requirements on a continuing basis: demonstrating that they have a principal place of business in

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[251] Finance Act 2013, s.207(2)-(6) of the Finance Act 2013.

[252] Revenue Scotland and Tax Powers Act 2014 (RSTPA), Pt 5.

[253] For example, Directive 2016/1164 (the Anti-Tax Avoidance Directive) (2016) OJ L193/1, transposed by the UK by the Taxation (Internal and Other Provisions) Act 2010 (TIOPA), Part 9A. See also Communication from the Commission to the European Parliament and the Council, n.98, 7.

[254] Young, n.54, 585-586.

[255] Blackett-Ord and Haren, n.187, para. 1.15, Insolvency Act 1986, s221 as amended by Insolvent Partnerships Order 1994, SI 1994/2421, Schs 3-6.

[256] Law Commissions, n.80, 260 footnote 26, Whittaker and Machell, n.37, para 2.12.

[257] Companies Act 2006, s.86 as amended by the LLP Regulations 2009 n.47, Reg. 16.

[258] LPA 1907, s.8A.

[259] Companies House, *Guidance: Set Up and Run a Limited Partnership,* <https://www.gov.uk/guidance/set-up-and-run-a-limited-partnership>.

[260] Law Commissions, n.80, para. 15.34, I'Anson Banks, n.124, 29-27, Elspeth Berry, *Death by a Thousand Cuts of Storm in a Teacup? The Reform of Limited Partnership Law* 6 JBL 578, 583 (2011).

[261] See n.181.

the UK; carrying on a legitimate business at a UK address; or engaging the services of an agent that is registered with a UK AML supervisory body and which has agreed to provides its address as a service address for the LP.[262] However, only the first two alternatives would guarantee a substantive business in the UK. LPs with no real connection to the UK will still be able to register here, because the private equity industry objected to a requirement of a permanent place of business in the UK.[263] The effectiveness of this reform will also depend on enforcement by Companies House which is problematic because of lack of resources, and indeed only the third alternative is readily susceptible of proof. A further problem is that these proposals do not apply to LLPs (or indeed companies) and may thus lead to a migration rather than a reduction of the abuses. In addition, it is not clear whether this will apply to the private fund LP (PFLP) vehicle, as PFLPs have been exempted from many of the requirements of the LPA 1907[264] and clearly the financial services industry which lobbied for the PFLP legislation would like an exemption from the latest proposed reforms.[265]

There is also a strong case for an SLP to be required to have a continuing address in Scotland rather than merely the UK[266] because it benefits from separate legal personality, whereas LPs registered elsewhere in the UK do not, and if Scottish partnerships can 'move' this will extend the availability of legal personality in a rather obscure way which could be open to misuse. The equivalent requirement should also be imposed on English, Welsh and Northern Irish LPs. On the basis of his argument that SLPs acquire separate personality by private ordering, and can lose it similarly, Jonathan Hardman argues that if an SLP is offshored it loses its separate legal personality and therefore the associated benefits, but while this argument is attractive it is by no means certain.[267]

i) Proposed Strike Off Power

At present there is no procedure to strike an LP off the register. This removes a potential sanction against wrongdoing LPs and enables LPs to obfuscate their existence. The government has rightly proposed that Companies House should have the same powers to strike dormant LPs off the register and to strike off an LP following a court order as it has for LLPs and companies.[268] However, while its original proposal was

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[262] BEIS, *Limited Partnerships: Reform of Limited Partnership Law – The Government Response to the Consultation,* n.4, para. 16.

[263] BEIS, *Limited Partnerships: Reform of Limited Partnership Law – The Government Response to the Consultation,* n.4, para. 13, Stephen Robinson, *The Limited Partnership 'Crackdown': More Heat and Light Than Substance?* (Macfarlanes LLP, 28 November 2018).

[264] Berry, *Limited Partnership Law and Private Equity,* n.24, 116-125.

[265] Stephen Robinson, *UK Limited Partnership Law Reform: Flexibility on 'UK Links', But What Does It Mean for PFLPs?* (Macfarlanes LLP, 10 December 2018).

[266] Law Society of Scotland, *Call for Evidence Response,* n.230, 12 cf. objections to this proposal by the Scottish Property Federation, n.68, Questions 13 and 14.

[267] Hardman, n.8, sections 5 and 6.

[268] BEIS, *Corporate Transparency and Register Reform: Government Response,* n.5, paras 284-285 and Limited *Partnerships: Reform of Limited Partnership Law – The Government Response to the*

for a court order to be based on the public interest, either on grounds equivalent to those for LLPs and companies[269] or limited to the commission of certain offences,[270] the current proposal merely says that '[f]urther work will be undertaken to explore the criteria which should be met'.[271] It is submitted that, at very least, the narrowly defined public interest grounds for striking off companies and LLPs should be applied to LPs: i.e. that it is in the public interest to do so according to a report by the companies inspectors (a regime which, as discussed above, BEIS is considering extending to LPs), or by the Financial Services and Markets Act inspectors (a ground which, curiously, is disapplied for LLPs), or by the Serious Fraud Office.[272] Better still, the public interest grounds should be extended for all types of registered business vehicle, to include registration without proper AML procedures being conducted, or the authorities believing the business is being used for criminal activities.[273] Jonathan Hardman has also suggested striking off for illegality, on the basis that this automatically dissolves the partnership and the register should reflect this.[274]

If Companies House is given the power to strike off LPs, it should also be mandated to record the number of 'strike offs' for a particular TCSP, in order to use this as part of a risk assessment and risk profile for that TCSP.

j) Banning Corporate Partners/LLP Members?

The proposed legislative ban on corporate directors[275] was not been applied to corporate partners or LLP members, despite some parallels between them and company directors, and the inherent risk posed by any structure whose managers and owners are not responsible for its debts and obligations.[276] The government did emphasise that 'it is important that we do not allow the UK LLP to become an increasingly popular choice for those seeking opacity to facilitate illicit activity' and proposed to review this position should compelling evidence of abuse emerge.[277] However, this is not reassuring given that such evidence is already available (as discussed above), and given its assertion that '[p]artnerships without legal personality…do not involve the same risk of opacity of ownership and control'.[278] The Office of Tax Simplifica-

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Consultation, n.4, pp14-15, HM Government and UK Finance, n.57, para. 7.14, and the Companies Act 2006, ss1000-1001 (applied with modifications to LLPs by the LLP Regulations 2009 n.47, Reg 50).

[269] Insolvency Act 1986, ss124(4)(b) and 124A, applied with modifications to LLPs by the LLP Regulations 2001 n.62, Sch. 3.

[270] BEIS, *Corporate Transparency and Register Reform: Consultation*, n.5, paras 224-230.

[271] BEIS, *Corporate Transparency and Register Reform: Government Response,* n.5, p65.

[272] Insolvency Act 1986, s124A as applied and modified by the LLP Regulations 2001 n.62, Sch 3.

[273] Chan, n.77.

[274] Hardman, n.8, section 5.

[275] Companies Act 2006, s.156A, to be inserted by the Small Business, Enterprise and Employment Act 2015, s.87.

[276] TI-UK and bell¿ngcat n.2, 20, Recommendation 3.

[277] Department for Business, Innovation and Skills (BIS), *Corporate Directors: Scope of Exceptions to the Prohibition of Corporate Directors,* 21 (November 2014).

[278] BIS, n.277, 20.

tion (OTS) noted that corporate partners are important for some partnerships to save tax by applying corporate rather than income tax rates or accessing specific reliefs for companies and profit retention to facilitate working capital, or for business-specific reasons such as farming partnerships using a corporate member to hold land for continuity reasons.[279] However, these are not sufficiently weighty reasons if the counter argument is the need to prevent ML and other crimes; and although the government is consulting on whether its latest proposals on corporate directors should be applied to LLPs and LPs, these proposals fall short of a ban, as discussed above.

The earlier introduction of a requirement merely for companies to have at least one natural director[280] triggered a significant increase in the number of SLPs being registered, as those looking to facilitate illicit activity migrated to SLPs.[281] By 2016, 94% of SLPs were controlled by corporate partners, 71% by corporate partners based in secrecy jurisdictions, and only 5% had corporate general partners registered in the UK.[282]

6. Ethical Solutions

The failings of regulation[283] – because of inherent complexity and frequent ambiguity,[284] because wrongdoing is often not identified until too late due to inadequate monitoring and over reliance on individual complaints,[285] and for the more specific reasons discussed above – strongly suggests that ethics must play a greater role in supplementing partnership regulation.[286] This dual approach reflects Fuller's argument that there are separate moralities, of duty and aspiration; it allows for the minimal levels of regulation required by the morality of duty in order to ensure an ordered society, but supplements it with an ethical framework which implements the morality of aspiration in order to achieve personal and collective excellence.[287] Ethics can enable a correct balance to be drawn between what is profitable and what may be good in other respects,[288] particularly where there are loopholes in the law[289] – as with the PAR 2008

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[279] OTS, n.16, paras 3.3, 3.17, F.13 and F.14.

[280] Companies Act 2006, s.155.

[281] TI-UK and bell¿ngcat n.2, 9.

[282] TI-UK and bell¿ngcat n.2, 9.

[283] Phil Rudolph, *The Role and Limits of Ethics Legislation – The US Experience* in Peter Whates (ed.), *Business Ethics and the 21st Century Organization,* 6-10 (London; British Standards Institution 2006).

[284] Robert W Gordon, *Why Lawyers Can't Just Be Hired Guns* in Deborah L Rhode (ed.), *Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation*, 48 (Oxford; OUP 2000), Blair and Barbiani, n.6, 29.

[285] Clarke, n.112, 339, Rhode, *Ethics in Practice* in Rhode (ed.), *Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation,* n.284, 15.

[286] Blair and Barbiani, n.6, 30.

[287] Fuller, n.7, 5-9, Smith, n.7, 257.

[288] Geoffrey Chandler, *Towards a Responsible Capitalism* in Whates, n.283, 222-228.

[289] Daniel T Ostas, *The Ethics of Corporate Legal Strategy: A Response to Professor Mayer* 48 Am Bus LJ 765, 767-768 (2011) and *Legal Loopholes and Underenforced Laws: Examining the Ethical*

– or where the law is underenforced[290] – as with the PSC register. Although ethics do not obviate the need for regulation,[291] implementing a comprehensive ethical framework would resolve, or at least reduce, the tension between regulation and the desire of businesses and their participants to avoid it,[292] and raise standards above the legislative minimum. Inculcation of an ethical framework can ensure that businesses are willing to comply with the law,[293] and this more persuasive and co-operative strategy can promote better relations between businesses and the enforcement agencies,[294] and thus more effectively combat complex abuses where detection and enforcement are difficult and costly.[295]

Ethical considerations arise in practice, both for professional advisors and the businesses they advise, not only where activities are criminal, but also where they distort the application of the law or social norms; for example aggressive tax avoidance which reduces the money available for public services and confers a competitive advantage on those who can afford specialist advice, avoidance of other laws such as those for employment protection, and facilitation of potentially criminal behaviour. Ensuring that businesses' responsibilities include not only the economic and the legal but also the ethical can protect the interests of stakeholders other than managers and owners, in accordance with developing notions of business social responsibility and businesses as good citizens:[296] the 'upright' partnership must go beyond 'mere compliance' with the law because 'laws … frequently reflect "minimums" … [which] may not be at a level or standard that is truly needed to protect various stakeholder

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Dimensions of Corporate Legal Strategy 46 Am Bus LJ 487, 514-515 (2009), R M Thomas, *To What Extent Is It Possible to Legislate for Good Behaviour in Business (That Is, Create 'Hard Law'). Or, to What Extent Should We Rely on Non-Binding Guidance, Principles, and Codes of Conduct (Known as 'Soft Law') to Encourage Good Behaviour in Business?,* Business Ethics and Corporate Social Responsibility: Cambridge-Gourlay-Trinity Lectures, 58 (Ethics International Press 2015).

[290] Ostas, *Legal Loopholes and Underenforced Laws,* n.289, 493-494, Don Mayer, *Legal Loopholes, Business Ethics, and Corporate Legal Strategy: A Reply to Professor Ostas* 48 Am Bus LJ 713, 722-725 (2011).

[291] Peter Bloom, *The Ethics of Neoliberalism: The Business of Making Capitalism Moral*, 46 (Routledge 2017).

[292] Hutter, n.113, 5

[293] Croall, n.113, 47 and 49, Tom R Tyler, *Psychology and the Deterrence of Corporate Crime* in Jennifer Arlen (ed.), *Research Handbook on Corporate Crime and Financial Misdealing*, 12-13 and 21-22 (Cheltenham; Elgar 2018).

[294] Christopher Hodges, *Ethical Business Regulation: Understanding the Evidence*, 7 (BIS 2016).

[295] Croall, n.113 46, Robert Baldwin, Martin Cave and Martin Lodge, *Self-Regulation, Meta-regulation, and Regulatory Networks,* 140, 147-150, in their *Understanding Regulation: Theory Strategy and Practice* (Oxford; OUP 2nd ed 2011), Hodges, *Ethical Business Regulation,* n.294, 3.

[296] Ostas, *The Ethics of Corporate Legal Strategy,* n.289, 766, Archie B Carroll, *The Four Faces of Corporate Citizenship* 100 Business and Society Review 1 (1998) and *Corporate Social Responsibility: The Centrepieces of Competing and Complementary Frameworks* 44(2) Organizational Dynamics 87 (2015), Jonathan Herring, *Legal Ethics*, ch. 12 (Oxford; OUP 2nd edn 2017), Blair and Barbiani, n.6, 38-42, Andrew Crane, Dirk Matten and Jeremy Moon, *Corporations and Citizenship*, ch. 2 (Cambridge; CUP 2000), Alyson Warhurst and Kevin Franklin, *Beyond the Limitations of a Written Code of Ethics*, 31 in Whates, n.283.

groups and….may lag behind ethical thinking'.[297] Eliminating, or at least reducing, the desire of businesses and their advisors to avoid or exploit the regulatory system including the underpinning law would help to restore the legitimacy of that system as well as enhance certainty and fairness.[298] Ethics could create 'buy-in' to respecting not only the letter of the law but also the spirit of transparency and honesty underlying those laws,[299] and research indicates that compliance is greater where the rules are regarded as being applied and enforced fairly.[300] Further, studies have shown that sound business ethics are in the interests of the businesses themselves.[301] 'Ethically weak' behaviour exposes a business to greater reputational and legal risk,[302] and ethics are essential for the long-term sustainable survival and profitability of any business because of their positive effects on employee motivation, retention and recruitment, and improved brand image leading to increased revenue.[303] Even Milton Friedman qualified his statement that 'the responsibility of business 'is to make as much money as possible' with the caveat 'while conforming to their basic rules of society, both those embodied in law and those embodied in ethical custom';[304] and the 'Ten Principles' of the voluntary UN Global Compact for business, which purport to reflect universally agreed business values including anti-corruption, have over 13,000 participating businesses in over 160 countries.[305]

A detailed account of the major ethical theories is beyond the scope of this article, and in the interests of brevity the following discussion draws substantially on the

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[297] Carroll, *The Four Faces of Corporate Citizenship,* n.296, 4, Lynn Sharp Paine, *Moral Thinking in Management*, 59 and 65-66 in Rhode (ed.), *Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation,* n.284.

[298] Lynn M LoPucki and Walter O Weyrauch, *A Theory of Legal Strategy* 49 Duke LJ 1405, 1482-1483 (2000), Hodges, *Ethical Business Regulation,* n.294, 4.

[299] Andrew Boon, *The Ethics and Conduct of Lawyers in England and Wales* 3 (Oxford; Hart 3rd edn 2014).

[300] Hodges *Ethical Business Regulation,* n.294, 4 and 8.

[301] Hodges *Ethical Business Regulation,* n.294, 6, Carroll, *The Four Faces of Corporate Citizenship,* n.296, 4, Paine, n.297, 59, Andrew Crane and Dirk Matten, *Business Ethics,* 49 (Oxford; OUP 4th edn 2015).

[302] Paine, n.297, 70, Linda Klebe Trevino, Laura Pincus Hartman and Michael Brown, *Moral Person and Moral Manager: How Executives Develop a Reputation for Ethical Leadership* 42(4) Calif Manage Rev 128 (2000), Blair and Barbiani, n.6, 49, Manuela Weber, *The Business Case for Corporate Social Responsibility: A Company-Level Measurement Approach for CSR* 26 European Management Journal 247, 248-249 (2008), Elizabeth C Kurucz, Barry A Colbert and David Wheeler, *The Business Case for Corporate Social Responsibility* in Andrew, Dirk Matten, Abagail McWilliams, Jeremy Moon and Donald S Siegel (eds.), *The Oxford Handbook of Corporate Social Responsibility*, 90-91 (Oxford; OUP 2008).

[303] Weber, n.302, 249-250, Kurucz et al, n.302, 88-89 and 91-92, Paine, n.297, 71.

[304] Milton Friedman, *The Social Responsibility of Business is to Increase Its Profits* New York Times Magazine 1221 (13 September 1970).

[305] <https://www.unglobalcompact.org/what-is-gc/mission/principles>, Warhust and Franklin, n.296, 25-27, Janet Morrison, *Business Ethics: New Challenges in a Globalized World* (London; Palgrave Macmillan 2015), Crane and Matten, n.301, 522-524.

summaries of the theories made by Parker and Evans,[306] Rhode et al.,[307] Herring[308] and Fryer.[309] Somewhat problematically, given that partnerships are abused both by their own partners and by their external advisors, who are often themselves also working in partnerships, the literature on ethics treats lawyers as distinct and different from other businesses.[310] This is despite the evolution of law firms from professionals to economic enterprises run on business principles[311] in direct competition for business advisory work with accountants and a range of other TCSPs, and despite the fact that the laws regulating the formation and operation of partnerships apply equally to both.

Turning first to the lawyers, the ethics of corporate lawyers are important because they facilitate many of the economic activities in society.[312] One ethical approach is to act as an adversarial advocate and be entirely partisan to the client,[313] but this is inappropriate for corporate lawyers who are generally acting transactionally rather than adversarially and whose clients are not underprivileged victims.[314] Another is to apply the ethics of society generally, either by activism for justice, using legal practice to effect change, or 'caregiving', focusing on relationships, including with the community;[315] but again this is also inappropriate because it is liable to put the lawyer's commitment to justice or wider society above the interests of the corporate client, which is likely to lead to the client taking its business elsewhere.[316] The most appropriate ethical approach is responsible lawyering – acting as officer of the court (which is already a regulatory duty on English and Welsh solicitors that can override their duty to act in a client's best interests in litigation[317]) and agent of the system of institutions and norms within which the client's interests must be pursued,[318] and thus in the public interest and independently of the client.[319] Otherwise, a corporate lawyer

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[306] Christine Parker and Adrian Evans, *Inside Lawyers' Ethics,* 217 (Cambridge; CUP 2007), Boon, n.299, 26-27.

[307] Rhode (ed.), *Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation,* n.284.

[308] Herring, n.296, 12.

[309] Mick Fryer, *Ethics Theory & Business Practice*, 136-137 (Sage 2015).

[310] Rob Atkinson, *Connecting Business Ethics and Legal Ethics for the Common Good: Come, Let Us Reason Together* 29 Iowa J Corp L 469, 477-483 (2004), June Pritchard, *Acting Professionally: Something That Business Organisations and Individuals Both Desire?* in Peter WF Davis (ed.), *Current Issues in Business Ethics* (London; Routledge 1997).

[311] Tanina Rostain, *Self-Regulatory Authority, Markets, and the Ideology of Professionalism* in Robert Baldwin, Martin Cave and Martin Lodge (eds), *The Oxford Handbook of Regulation,* 171 (Oxford; OUP 2010), Elizabeth Chambliss, *The Nirvana Fallacy in Law Firm Regulation Debates* 33 Fordham Urb LJ 119, 119-122 (2005).

[312] Parker and Evans, n.306, 214.

[313] Parker and Evans, n.306, 14-24 and 215-216, John C Coffee, *Gatekeepers: The Professions and Corporate Governance,* 197 (Oxford; OUP 2006).

[314] Parker and Evans, n.306, 215 and 225-226, Rhode, *Ethics in Practice,* n.285, 9.

[315] Parker and Evans, n.306, 28-37.

[316] Parker and Evans, n.306, 31.

[317] *Arthur JS Hall v Simons* [2002] 1 AC 615, 686 and the SRA, *A Guide to the Application of Principle 1* (25 November 2019) <https://www.sra.org.uk/sra/corporate-strategy/sub-strategies/enforcement-practice/guide-application-principle-1/>.

[318] Gordon, n.284, 44-45.

[319] Parker and Evans, n.306, 24-27 and 226-231.

may avoid asking questions which might give rise to ethical considerations or indeed consciously use the law to achieve unethical goals[320] – behaviour which is present in many of the abuses.

For all businesses, including lawyers and other professional advisors, social contractarian ethics justify controls which are necessary to live with the advantages of society, so long as there is voluntary – usually tacit – acceptance of those controls.[321] Thus by establishing themselves under the law of a particular country, businesses voluntarily consent to a hypothetical agreement to pay taxes and comply with regulation in return for benefiting from that country's business services, such as registration and legal recognition and enforcement of business arrangements, and from its general benefits, such as communications infrastructure, an educated workforce and accumulated scientific/technical/financial knowledge.[322] Regulation alone mandates only minimum standards of business behaviour and not the higher standards which would reflect the social contract more fairly, and is too easily circumvented as the abuses demonstrate.

More recently, the stakeholder theory has become the leading ethical business theory. It assumes that not only investors but other stakeholders have a legitimate claim on the firm's behaviour.[323] This is particularly relevant to the majority of partnerships which are not used purely as investment vehicles and in which, therefore, investors cannot be identified as a group separate from managers and workers. Stakeholders include suppliers creditors, employees and partners/LLP members, as well as stakeholders in all of these, including their families. This theory requires full compliance with tax regulation, criminal laws, and the transparency requirements which benefit suppliers and other creditors, but the extent to which it would raise standards beyond the legal minimum is unclear. Further, although the government itself could be considered to be a stakeholder as representative of the public interest,[324] for example in relation to maximising tax revenue, it is also a self-interested stakeholder in maximising its chances of being re-elected, which can lead to dependency on the financial and other support of businesses, a factor implicated in the weakness of regulation[325] and likely to reduce the government's effectiveness in pressurising business to act more ethically.

Other major ethical approaches can be divided into rule-based, character-based, or consequentialist. A rule-based approach holds that certain actions are inherently good – or bad.[326] For example, the Kantian approach argues that actions should be based

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[320] Parker and Evans, n.306, 217.

[321] John Rawls, *A Theory of Justice* (Oxford; OUP 1999), Fryer, n.309, Ch. 4, Richard Norman, *The Moral Philosophers: An Introduction to Ethics*, 191 (Oxford; OUP 2nd edn 1998), Thomas Donaldson and Al Gini, *Case Studies in Business Ethics*, 8-9 (Upper Saddle River, NJ; Prentice-Hall 4th edn 1996).

[322] Fryer, n.309, 136-137.

[323] Crane and Matten, n.301, 58-59.

[324] Crane and Matten, n.301, 490-497.

[325] See n.109.

[326] Donaldson and Gini, n.321, 6-8.

on a duty to act in accordance with a universal and rational morality,[327] and would thus invalidate setting up a business to launder money or evade tax, even though the formation itself is lawful, since the motive is not compliance with a moral duty but personal preference.[328] This approach is problematic because of the inherent difficulties identifying and imposing a universal morality.

A character-based approach focuses on whether the attitude motivating the action is ethical.[329] For example, virtue theory[330] as espoused most notably by Aristotle[331] focuses on the good habits or 'virtues' which an 'ethical' person needs to have to flourish, for example justice or compassion. Such a person can be expected to act ethically. However, although professional conduct rules may inculcate these habits, and exclude from the profession those who do not practice them, they still depend on personality and the effectiveness of training; while in other businesses the ethical training and standards – if any – will depend on the role undertaken by the person in question. This approach also fails to reflect the fact that a business, and particularly a partnership,[332] is not a single character but a collection of relationships between individuals who are thereby exposed to being 'socialized into the [businesses'] norms, values and mores',[333] which often include wrongdoing.[334]

A consequentialist approach determines whether conduct is ethical by examining its consequences.[335] For example, utilitarianism focuses on achieving the greatest possible good for the greatest number of people.[336] This would invalidate setting up or operating a business in a way which reduces tax revenue or causes other harms to the community or the economy generally,[337] even if it maximises business performance[338] or investor value. In order to avoid the inherent difficulties of defining what is 'good' in a particular scenario, and unpredictability of the consequences,[339] the approach of rule- (rather than act-) consequentialism seeks to define rules which in themselves will produce the best consequences overall, rather than necessarily in an individual case.[340] Of these three ethical approaches, this is the most likely to eliminate

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[327] Tim Jankowiak, *Immanuel Kant* in *Internet Encyclopaedia of Philosophy,* <https://www.iep.utm.edu/kantview/#H5>, Norman, n.321, ch. 6, Kara Tan Bhala, *The Philosophical Foundations of Financial Ethics,* 14-18 in Russo et al., n.6.

[328] Fryer, n.309, Ch. 3

[329] Paine, n.297, 61, Donaldson and Gini, n.321, 9-10.

[330] Fryer, n.309, Ch. 5, Carroll, *The Four Faces of Corporate Citizenship,* n.296, 5, Bhala, n.327, 21-24.

[331] Norman, n.321, ch. 3.

[332] Paine, n.297, 71-72.

[333] Snider, n.113, 52.

[334] Rostain and Regan, n.244, 326.

[335] Paine, n.297, 61, Donaldson and Gini, n.321, 3-6.

[336] Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, (first published 1781: Kitchener, Ont; Batoche Books 2000), John Stuart Mill, *Utilitarianism* (first published 1861, Kitchener, Ont; Batoche Books 2001). See also Norman, n.321, Ch. 7, Bhala, n.327, 9-13.

[337] Paine, n.297, 62-66.

[338] Norman, n.321, Ch. 6, Fryer, n.309, 81-83.

[339] Tyler, n.293, 31-35.

[340] Herring, n.296, 12, Donaldson and Gini, n.321, 5, Bhala, n.327, 10-11.

abusive behaviour which results in the harms discussed above, but elements of all three approaches are needed, and indeed rule-consequentialism inherently includes a useful element of the rule-based approach.

So, what would an ethical framework based on the social contract, the legitimate interests of stakeholders, and the achievement of the best consequences, rules and attitudes, look like, and how can it be created? First, its effectiveness will depend on the clarity[341] and flexibility of its drafting[342] in providing both general values reflecting the role of business as a good citizen[343] and specific rules to implement these values,[344] and in indicating how a balance between conflicting values or stakeholder demands should be resolved.[345] Many of these values are already widely shared (such as honesty, integrity and fairness[346]) but can easily be suppressed as a result of pressures on the business or the individuals within it, or socialization into acceptance of dubious practices. Thus, second, the guidelines must encourage businesses to reduce internal economic pressures on individuals within the business[347] which might result in unethical or ethically dubious behaviour,[348] in order to reduce the abuses which result from 'tension between profit and professionalism'[349] – the latter defined as including not only professional advisors in its widest sense as 'the combination of all the qualities that are connected with trained and skilled people'.[350] Third, they must also enable businesses to resist external competitive pressures which may otherwise result in anti-competitive and anti-social unethical practices,[351] both because of the need to generate profits in a competitive market and because '[i]t is easy to fall into the trap of believing that because a practice is being done by many (bribes, kickbacks…..) that it is an acceptable practice'.[352]

Fourth, ethical guidelines need to facilitate the further development of ethics in order to encourage businesses to consider interests beyond their own to mitigate the risk of behaviour which unreasonably fails to respect the common good yet can appear

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[341] Andreas Prindl, *Ethics in Financial Markets* in Whates, n.283, 156, Ethics & Compliance Initiative, *Code Construction and Content,* <https://www.ethics.org/resources/free-toolkit/code-construction/>.

[342] Crane and Matten, n.301, 190-199, Munro, n.353, 102-103, Justin O'Brien, *Recruiting Ethics – Citigroup, Corporate Governance and the Institutionalization of Compliance* in Whates, n.283, Ethics & Compliance Initiative, *Ten Style Tips for Writing an Effective Code of Conduct,* <https://www.ethics.org/resources/free-toolkit/style-tips/>.

[343] See n.284.

[344] Chamblis, n.300, 146-147.

[345] Legal Sector Affinity Group [comprising the AML supervisors for the legal sector], *Anti-Money Laundering: Guidance for the Legal Sector,* ch. 13 (March 2018).

[346] Blair and Barbiani, n.6, 45-48, Ethics & Compliance Initiative, *What are Common Code Provisions?,* <https://www.ethics.org/resources/free-toolkit/code-provisions/>.

[347] Rostain, n.311, 173.

[348] Rhode, *Ethics in Practice,* n.284, 19, Paine n.297, 67.

[349] Rhode, *Ethics in Practice,* n.284, 16-17.

[350] *Cambridge Advanced Learner's Dictionary & The*saurus (4th edn, CUP 2013).

[351] Coffee, n.313, 195-196, Paine, n.297, 67, Donald C Langevoort, *Behavioral Ethics, Behavioral Compliance* in Arlen, n.293, 270.

[352] Carroll, *The Four Faces of Corporate Citizenship,* n.296, 4, Snider, n.113, 52 Chambliss, n.311, 147.

rational if only narrow self-interest is considered.[353] In particular, many businesses, including professional advisors often 'serve massive clients…which….provide a significant proportion of their income; self-interest, disguised as loyalty to client is likely to outweigh obligation to society'.[354]

Fifth, professional ethics requirements must be aligned with these more generally applicable guidelines. Admittedly, like all businesses, professionals have multiple selves, including rational economic selves and moral selves,[355] and professionals have been implicated in the abuses. However, a substantial proportion are likely to be more accepting of an ethical framework than end users, who are liable to be dominated by their economic selves and thus to ignore ethical considerations which might reduce their ability to profit from wrongdoing, and as gatekeepers they are ideally situated to deny access to the partnership vehicle to wrongdoers.[356]

Sixth, an ethical framework must support ethical conduct both by individuals and businesses, by enabling both personal (character-based) and collective responsibility, requiring moral engagement with[357] and acceptance of[358] its principles.[359] All individuals involved in advising or operating a business must accept personal moral responsibility for the consequences of their individual actions,[360] and the roles of leaders and managers are particularly important both in terms of their personal ethical qualities and their ability to implement ethical behaviour throughout the business.[361] However, the ethical framework must avoid focusing too much on individuals, since most professional advisors and other business persons work in organisations which typically diffuse knowledge of wrongdoing and responsibility for it, and either pressure an individual to act against their personal (or professional) code or socialize them into changing their personal code.[362] Each business must therefore also take ethical responsibility for its (collective) actions,[363] and businesses' morality generally must

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[353] John Rawls, *Political Liberalism,* 48-54 (New York; Columbia University Press 1993).

[354] Richard Abel, *Towards a Political Economy of Lawyers* 117 Wis L Rev 1185 (1981).

[355] Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate*, ch. 2 (Oxford; OUP 1992).

[356] Ayres and Braithwaite, n.355, 20-27, Coffee, n.313, 198-199 and 228-230.

[357] Crane and Matten, n.301, 219, Sandra B Rosenthal and Rogene A Buchholz, *Rethinking Business Ethics: A Pragmatic Approach,* 194 (Oxford; OUP 2000).

[358] Clarke, n.112, 340-341

[359] Hodges, *Ethical Business Regulation,* n.294, 6.

[360] Rhode, *Ethics in Practice,* n.285, 19, Rogene A Buchholz and Sandra B Rosenthal, *Integrating Ethics All the Way Through: The Issue of Moral Agency Reconsidered* 66(2-3) J Bus Ethics 233, 234 (2006), Snider, n.113, 53.

[361] Ethics & Compliance Initiative, *Building Companies Where Values and Ethical Conduct Matter,* 8-15 (October 2018), Crane and Matten, n.301, 218-219, Trevino et al., n.302, 156-15, Prindl, n.341, 156-157, Blair and Barbiani, n.6, 34-35 and 48-49, Tyler, n.293, 30.

[362] David J Luban, *The Ethics of Wrongful Obedience* in Rhode (ed.), *Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation,* 94, n.284, Crane and Matten, n.301, 195.

[363] Buchholz and Rosenthal, n.360, 234-238, Christopher Hodges, *Law and Corporate Behaviour: Integrating Theories of Regulation, Compliance and Ethics,* 688-693 (Oxford; Hart 2015) and *Ethical Business Regulation*, n.290, 5-6.

undergo a cultural change through continued adoption of external social standards[364] (equivalent to that throughout the 20th century which resulted in improvements in workplace safety, working time and pay) so that abuses are recognised as having socially harmful consequences and therefore being unethical whether or not they are also illegal. Equally, a collective obligation is consistent with the fact that all firms – even those without separate personality – have rights which they can assert,[365] an internal agency structure which enables them to act, an external identity, and an organisational culture, all of which contribute to creating a basis for attributing ethical responsibility to a business.[366] However, while it is important to ensure both personal and collective engagement, separate codes for each would be unwise as it would create duplication and complexity and might thereby reduce engagement.[367] Although in both the individual and the collective context moral responsibility might appear too imprecise a concept, the same criticisms could be levelled at 'fairness' or 'justice', and both of these concepts have been accepted as being sufficiently clear to be justiciable,[368] and can therefore all the more be accepted as part of an ethical framework.[369]

As to how such a framework can be created, one option is to enshrine it in legislation, but this approach would suffer from many of the same problems as the regulatory legislation.[370] An alternative is a comprehensive ethics code. Those which already exist apply incompletely to only some professions, some other businesses, and some business sectors;[371] and they apply in varying ways. Even professions which are already subject to professional conduct rules, training and gatekeeping are implicated in the abuses,[372] which indicates that those rules are ineffective in enabling them to resist becoming subservient to corporate interests;[373] and non-traditional professions such as TCSPs do not even have professional conduct rules. The radical step of a

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[364] Snider, n.113, 52 and 55-57, Chambliss, n.311, 138-141, Tyler, n.293, 30, Langevoort, n.351, 270-271.

[365] For example, partnerships can sue and be sued (Civil Procedure Rules 1998, SI 1998/3132, PD7, I'Anson Banks, n.124, para. 14.06.

[366] Crane and Matten, n.301, 47-48, Buchholz and Rosenthal, n.360, 236-237.

[367] The SRA's recent division of its regulatory Code of Conduct into two, one for individuals and one for firms (although its Principles (including honesty, integrity and upholding public trust) remain common to both), has led to criticisms that it duplicates the burden of compliance (Helen Evans and Clare Dixon, *The New SRA Standards and Regulations: Greater Freedom for Solicitors?* (4 New Square Publications, 21 October 2019), Jessica Clay, *Understanding the New SRA Principles and Code: The Long Read* (Kingsley Napley, 24 October 2019).

[368] For example, the Human Rights Act 1998, Sch. 1, imposes the overriding obligation of a 'fair' trial, and the Civil Procedure Rules 1998, SI 1998/3132, rule 1.1, imposes the overriding objective of enabling the court to deal with cases 'justly'.

[369] Tyler, n.293, 29-30.

[370] Rudolph, n.283, 10-17.

[371] Blair and Barbiani, n.6, 42-45.

[372] Parker and Evans, n.306, 50, Abel, n.354, 1179-1187, Atkinson, n.310, 471, Chambliss, n.311, 142-145.

[373] Rostain, n.311, 182 and 186.

generally applicable code is therefore required,[374] enshrined in Companies House registration requirements, and in guidance accompanying regulatory legislation. It would also need to avoid the pitfalls which commonly cause codes to fail[375] because they do not achieve the ethical culture in a business which would reduce misconduct;[376] it needs to be understood, believed in at a fundamental level,[377] supported and reinforced[378] by guidance, reminders and career-long training, for example from the relevant trade or professional body,[379] monitored, and enforced with penalties.[380]

If there were to be a comprehensive ethical framework to which all businesses (including professional advisors) genuinely subscribed, to act responsibly and focus on what is good for society from social contractarian, stakeholder and utilitarian perspectives, including maximising tax revenue and minimising loopholes which allow the facilitation of ML and other criminal behaviour, the abuses could be reduced. However, to the extent that ethical inadequacies in the partnership ecosystem are addressed, the ethics of companies must also be addressed, in order to avoid migration rather than reduction of abuse.

7. Conclusion

The 'nuclear' option to combat the abuses would be to ban LPs and LLPs entirely, and indeed banning SLPs was apparently mooted by the government at one point.[381] However, this has rightly not been pursued; despite the vulnerabilities of partnership structures, they each offer many advantages in a unique combination. They are all flexible, efficient in integrating management and ownership, collegiate, tax transparent and private (which, it must be emphasised, can be entirely justified where there is genuine personal liability); some offer limited liability and/or separate personality. Partnership reform, whether regulatory or ethical, must allow these valuable features to be retained to the extent that this is consistent with combating the abuses.[382]

The government's proposals are welcome as a starting point – but they are inadequate, not least because many of them do not apply equally to LPs in the whole of

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[374] Hodges, *Ethical Business Regulation*, n.294, 6.

[375] Warhurst and Franklin, n.296.

[376] Crane and Matten, n.301, 216, Iain Munro, *Codes of Ethics: Some Uses and Abuses* in Peter WF Davies (ed), *Current Issues in Business Ethics,* 103 (Routledge 2016), Ethics & Compliance Initiative, *Global Business Ethics Survey: The State of Ethics & Compliance in the Workplace,* 10 (2018).

[377] Warhurst and Franklin, n.296, 28.

[378] Langevoort, n.351, 268-269 and 273-274.

[379] Hodges, *Ethical Business Regulation,* n.294, 3, Ethics & Compliance Initiative, *Measuring the Impact of Ethics and Compliance Programs,* 8-13 (June 2018), Warhurst and Franklin, n.296, 31, Philippa Foster Back, *Ethics and Management Challenges,* 188-190 in Whates, n.283.

[380] Thomas, n.289, 59, Hodges, *Ethical Business Regulation,* n.294, 4, Langevoort, n.351, 274-276.

[381] Michael Settle, *Theresa May Set to Ban Secretive Scottish Shell Companies to Halt Flow of Dirty Russian Money* (Glasgow, The Herald, 22 March 2018).

[382] Derek Mackay, *Scotland calls on UK Government to Reform SLPs* (Scottish Legal News, 15 August 2016).

the UK or to LLPs. Although the BEIS consultation on LPs arose from concerns about LPs, particularly SLPs,[383] LLPs have been implicated in many of the same activities[384] and it is unfortunate that the BEIS consultation and subsequent government proposals largely ignore them. The focus on SLPs has sometimes reduced scrutiny of other LPs – as evidenced by the PSC legislation – and of LLPs. As a result, those using SLPs for illegal purposes may simply migrate to other parts of the UK and those using LPs might simply convert to LLPs. In addition, law abiding partnerships of one type or in one jurisdiction will suffer a competitive disadvantage.[385]

The proposals are also inadequate in in their substance. It is not clear to what extent this inadequacy reflects a government deregulation agenda based on extensive lobbying by the financial services industry.[386] That industry has been identified as facilitating ML,[387] and Transparency International UK/belli¿ngcat suggested that PFLPs in particular 'could present another type of UK legal entity vulnerable to abuse by money launderers'.[388] Yet, the failure to regulate UK partnerships risks reputational damage to the UK,[389] as even the UK government itself has noted,[390] and reputation is an important competitive factor internationally.[391] The House of Lords has criticised the low standard of UK regulation and the laissez-faire Anglo-Saxon approach,[392] and Transparency International UK/belli¿ngcat observed that '[o]ne of the key advertised benefits of SLPs is that they provide the veneer of respectability associated with a UK corporate entity, whilst allowing their financial activity to be based elsewhere. Allowing this kind of abuse, and on [this] scale…, could severely damage the credibility of UK legal entities abroad'.[393]

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[383] BEIS, *Review of Limited Partnership Law – A Call for Evidence,* n.4, 3, 4 and 9.

[384] HM Treasury and Home Office, n.56, Box 9.B, Hilary Osborne and Caelainn Barr, *UK Partnerships Moved Billions Through Baltic to Europe, Data Shows* (The Guardian, 5 March 2019), Carlos Alba and Jordan Ryan, *British Firms 'Linked To Dirty Money Used Against Putin* Opponents' (The Sunday Times, 21 April 2019), SVT, *Swedbank Misled American Investors* (20 February 2019), <https://www.svt.se/special/swedbank/english/investigators/>, Jane Bradley and Oliver Bullough, *The Ghost Companies Connected to Suspected Money Laundering, Corruption, and Paul* Manafort (Buzzfeed, 23 August 2018), Graham Barrow, *Details, Dealings and Discoveries – Further Adventures in LLP Land*, <https://grahambarrow.com/details-dealings-and-discoveries-further-adventures-in-llp-land>, Inga Springe and Karina Shedrofsky, *Mega-donor to Pro-Russian Party Benefits from Magnitsky and Azerbaijani Laundroma*ts (Re:Baltica, 20 March 2019).

[385] Berry, *Limited Partnership Law and Private Equity,* n.24, 29.

[386] Berry, *Limited Partnership Law and Private Equity,* n.24, Vermeulen, n.9, 61-63, Craig Holman and William Luneberg, *Lobbying and Transparency: A Comparative Analysis of Regulatory Reform* 1(1) Int Gps & Advocacy 75, 78-79 (2012).

[387] HM Treasury and Home Office, n.56, paras 2.4 and 4.1.

[388] TI-UK and bell¿ngcat n.2, 20.

[389] JC Sharman, *The Money Laundry: Regulating Criminal Finance in the Global Economy,* 94 and 111 (Cornell University Press 2011), Andy Wightman MSP quoted in David Leask, *Fuerteventura Inter: Scots Firm at Centre of Organised Crime Probe into Weapons Deal* (Glasgow, The Herald, 26 July 2016).

[390] HM Government and UK Finance, n.57, para 1.17.

[391] Sharman, n.391, 58, 94, 131 and 153.

[392] HL Deb 6 June 2018, vol 791, cols 1355-1356 and 1360-1361.

[393] TI-UK and bell¿ngcat n.2, 19.

Further enhancing the regulatory regime to include greater and more widely applicable transparency requirements would significantly reduce the abuses as discussed above, and the costs would be relatively small given that registered and regulated firms already supply information to Companies House and/or regulators, and all firms will already prepare much additional information for their own purposes. What is needed most urgently is for Companies House to be mandated and properly resourced to verify information submitted to it, and monitor and investigate where that information is suggestive of suspicious activities or is not supplied at all. TCSPs must be properly regulated, including full AML monitoring, either by a new professional regulator or by HMRC with proper resourcing. Enforcement also needs to be more rigorous, which necessitates better training and resourcing of those responsible, including government agencies (Companies House and HMRC) and regulators.[394]

All enforcement agencies must take a proactive rather than a reactive approach, and violations should be published to act as a deterrent and provide effective training by way of salutary examples.[395] Legislative reform is also required; of the LP and LLP legislation (including to mandate a meaningful and enforceable link to the UK (and to Scotland in the case of SLPs)), of the PAR 2008, and of the AML legislation.

Last, and by no means least, there must be a new ethical framework, including:

1. The identification of ethical beliefs which are already widely shared;
2. The facilitation of the further development of ethics, including as they apply to market activity,[396] in order to create a more widely applicable ethical framework;
3. Ensuring that existing professional and other ethical codes are aligned with the new framework;
4. Support for ethical conduct by both individuals and firms.

This will improve compliance with existing regulation (including by closing loopholes in it), and raise standards above that regulatory minimum: 'law has not been the primary cause of reforms which have occurred. At most, law reflects, and rather weakly at that, changes which ha[ve] already occurred on the ideological level…. Public opinion, indeed, regularly favors much stronger laws and sanctions on [business] misbehavior than the state is able or willing to deliver'.[397]

To borrow from a discussion on the nature and purpose of corporations,[398] it must be asked 'for whose benefit are partners supposed to act?', and a conscious choice made between answering either 'for partners alone, to advance their own financial interests' or 'for partners and the wider community'. This article advocates the latter, on the basis that a business 'is not strictly private; it is tinged with a public purpose…

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[394] Rhode, *Ethics in Practice,* n.285, 20.

[395] Rhode, *Ethics in Practice,* n.285, 15 and 18

[396] Blair and Barbiani, n.6, 46.

[397] Snider, n.113, 9.

[398] William T Allen, *Our Schizophrenic Conception of the Business Corporation* 14(2) Cardozo Law Rev 261, 264-265 (1992).

[of] increasing the general welfare'[399] and 'should be organised and operated to serve the interests of society as a whole … the interests of [owners] deserve no greater weight in this social calculus than the interests of any other members of society.'[400] Ultimately, the purpose of government regulation and of a supplementary ethical framework is to achieve the benefits that businesses and their participants, acting in their own self-interest and shielding themselves,[401] do not generate.[402]

[399] Allen, n.398, 265.

[400] Henry Hansmann and Reinier Kraakman, *The End of History for Corporate Law* 88 Geo LJ 439, 441 (2001).

[401] Hansmann, Kraakman and Squire, n.60.

[402] Carroll, *The Four Faces of Corporate Citizenship,* n.296, 3.